



## **Fayrefield Foods A/S (“the Company”)**

### **Terms and Conditions of Sale**

#### **General**

All quotations and all orders are subject to these Terms and Conditions, which supersede any other conditions contained, mentioned or referred to in the Company’s documentation or elsewhere, and override and exclude any other terms stipulated or incorporated or referred to by the purchaser, whether in an order or in any negotiations or in any course of dealing established between the Company and the purchaser. All subsequent orders made by the purchaser shall be similarly subject to these Terms and Conditions.

No contract for the sale of the goods specified overleaf or elsewhere (“the Goods”) shall be concluded without these Terms and Conditions being incorporated therein.

The purchaser acknowledges that there is nothing outside of these Terms and Conditions which have induced it to enter into the contract (which expression shall include any contract of which these Terms and Conditions form part).

No amendment to or modification of these Terms and Conditions shall be effective unless made by an express written agreement between the parties. The signing by the Company of any of the purchaser’s documentation shall not be construed as any express or implied modification of these Terms and Conditions or as acceptance of the terms of such documentation.

All orders for Goods shall be deemed to be an offer by the purchaser to buy the Goods pursuant to these conditions.

Acceptance of delivery of the Goods by or on behalf of the purchaser shall be deemed conclusive evidence of the purchaser’s acceptance of these conditions.

#### **Quotations**

Quotations given by the Company are subject to withdrawal at any time prior to receipt of an unconditional order from the purchaser and shall in any event be deemed to be withdrawn unless so accepted within 21 days from the date on the quotations. In any event, any order sent by the purchaser shall be accepted at the Company’s sole discretion.

#### **Warranties and Liability**

All Goods supplied by the Company to the purchaser have been subjected to such checks or verification as might be expected of a reasonable supplier in the position of the Company PROVIDED THAT this warranty shall not extend to the sale of such Goods under the purchaser’s own labels or to the labelling of such Goods or to any matters or statements forming part of or contained in the labelling save in so far as such labelling, matters or statements conform with the description or specification of such Goods (in regard to name, weight, constituents and other matters) as agreed to be supplied by the Company AND PROVIDED FURTHER THAT there are expressly excluded all terms, conditions and warranties (other than those imposed by statute) to the effect that any goods supplied:



- a) may lawfully be supplied or offered for sale outside of Denmark; or
- b) are suitable for mixing, blending or compounding with other Goods unless, prior to the contract for sale of such first-mentioned Goods, the purchaser has made full disclosure of all material facts relating to the use to which such Goods are to be put and of any particular standards, requirements or specifications to which those other Goods are expected to conform. The purchaser shall be solely liable for all claims, losses, damages and liabilities arising as a consequence of the purchaser's failure to make such disclosure and will indemnify the Company in respect thereof.

All representations, warranties or guarantees given to third parties by the purchaser with reference to the Goods are given entirely at the risk of purchaser regardless as to whether or not such representations, warranties or guarantees are consistent or inconsistent with these Terms and Conditions.

The Company shall not be liable for defects in the Goods caused by the purchaser or any third party or for any unsuitability of the Goods unless (in the case of unsuitability) full disclosure has been made by the purchaser.

The Company's liability to the purchaser in respect of or arising out of this contract or in tort (including negligence and breach of statutory duty) or otherwise howsoever arising shall not exceed a sum equal to three times the value of the Goods to the Company exclusive of VAT or any other applicable tax or duty.

Under no circumstances does the Company accept responsibility for loss of profit, revenues, business goodwill or anticipated savings by the purchaser or for any special indirect or consequential damage of whatsoever nature and howsoever arising.

### **Specification**

Other than own-label Goods, the Company reserves the right and discretion to alter or change dimensions or composition of the Goods within reasonable limits and having regard to the nature of the Goods and the purposes to which the Company is aware they are intended to be put.

The purchaser shall indemnify the Company from and against all actions claims costs and proceedings which arise due to the manufacture or sale of Goods to the purchaser's specification where such specification is at fault or where it is alleged that the specification and/or label involve an infringement of a patent copyright registered design or design copyright or other exclusive right.

### **Storage, Stock Rotation and Subsequent Use**

Suitable storage conditions and proper stock rotation shall be observed by the purchaser in the case of all Goods. Goods should not be released for sale or distribution where by reason of their age or having regard to the time normally taken in the progress of Goods along the distribution chain they could not reasonably be expected to reach the ultimate consumer in a merchantable state and prior to the expiry of their recommended shelf life.

All Goods are supplied on the strict understanding that they will be used within the European Union and not exported or sold unless the Company has confirmed in writing that they are suitable for this purpose. The purchaser undertakes to inform its own purchasers of this condition and to



indemnify the Company in respect of all claims and liabilities arising directly or indirectly in consequence of its failure to do so.

### **Interference with Markings**

The purchaser shall not alter, obscure, remove, conceal or otherwise interfere with any markings or other indication of source or origin on any Goods, their labelling or packaging.

### **Delivery**

Any delivery date quoted by the Company is an estimated date only and the Company shall not be liable for any loss or damage occurring through any failure or inability to meet such date.

Delivery shall be at the Company's premises unless otherwise stipulated or agreed in writing by the Company. The Company may charge for delivery at a location other than its premises.

If the purchaser refuses or fails to take delivery of Goods tendered in accordance with a contract the Company shall be entitled to immediate payment in full for the Goods so tendered. The Company shall be entitled to store at the risk of the purchaser any Goods of which the purchaser fails or refuses to take delivery and the purchaser shall in addition to the purchase price pay on demand all costs of such storage and any additional costs incurred as a result of such failure or refusal. The Company shall be entitled in the case of short-life Goods immediately to dispose of the same in such manner as the Company may in its absolute discretion determine and in the case of all other Goods the Company shall be entitled after the expiration of one month from the date of failure or refusal to take delivery to dispose of the Goods in such manner as it may in its absolute discretion determine.

Notwithstanding anything in these Terms and Conditions expressed or implied to the contrary, the Company shall not be liable in respect of any shortage of or failure to supply Goods where such shortage or failure is due to riot, war, threat of or preparation for war, explosion, fire, flood, invasion, storm, earthquake, subsidence, epidemic or other natural physical disaster or acts or restraints of government, civil commotion, strikes, lock-outs, stoppages or restraint or withdrawal of labour or other industrial action or shortages of labour or of materials or any acts or events or circumstances beyond the reasonable control of the Company for whatever cause whether partial or general and the Company in such circumstances shall not be liable in respect of any loss to the purchaser (consequential or otherwise) arising there from.

Delivery to a carrier shall be deemed to be delivery to the purchaser.

### **Claims for Loss, Damage or Shortages**

Delivery notes must be checked and signed by the purchaser. Invoices will be deemed proof of delivery of all Goods specified therein unless claims in respect of Loss, Damage or Shortages are submitted by the purchaser in writing within 2 days of the invoice date.

The Company shall be deemed to have fulfilled its contractual obligations in respect of any delivery regardless of the fact that the quantity may be up to 5% more or less than the quantity specified in the contract and in such event the purchaser shall pay for the actual quantity delivered subject to verification to the Company's satisfaction.

In the event of underweight Goods greater than the 5% referred to above the Company shall only be liable to make up the delivery or give a credit note at the Company's absolute discretion.



In the case of non-delivery, the purchaser must within 7 days of the invoice date so advise the Company in writing.

Subject to these Terms and Conditions, acceptance of Goods by the purchaser shall be deemed to take place on delivery. Goods are not supplied on a sale or return basis.

### **Title and Risk**

It is a condition of the contract that the Property in all of the Goods to be delivered by the Company to the purchaser shall remain vested in the Company until payment due to the Company under all contracts between the Company and the purchaser has been made in full. Even though the Property in the Goods has not passed to the purchaser the Company shall be entitled to issue and serve proceedings for the price of the Goods together with interest and costs once payment has become due.

Until such time as the property to the Goods passes to the purchaser, the purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall (at the purchaser's own cost) ensure that the Goods remain separately identifiable from those of the purchaser and third parties and appropriately stored in every respect, protected, insured and identified as the Company's property. Until that time, the purchaser shall not be entitled to re-sell or use the Goods in the ordinary course of its business.

In the event of sale of the Goods or any part of them by the purchaser in the ordinary course of its business, the purchaser shall, if required by the Company, assign to the Company its right to recover the selling price from the third party concerned in a form submitted by the Company.

Until the property in the Goods passes to the purchaser in accordance with these conditions, the purchaser shall store the Goods separately and identifiably and yield them up forthwith on request by the Company.

The risk of loss or damage to all or any of the Goods shall pass to the purchaser upon delivery.

Until such time as the property in the Goods passes to the purchaser (and provided that the Goods are still in existence and have not been re-sold), the Company shall be entitled to require the purchaser to deliver up the Goods to the Company and, if the purchaser fails to do so forthwith, the Company or its agents are hereby granted by the purchaser an irrevocable right and licence to enter upon any premises of the purchaser or any third party where the Goods are stored and repossess the Goods.

The purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but, if the purchaser does so, all monies owing by the purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

### **Prices**

Prices charged for Goods are those ruling at the date that the contract is made.

All prices quoted are subject to alteration without notice and unless otherwise stated are net of VAT and any other tax or duty.



Where the Company has quoted a price it reserves the right to adjust such quoted prices to take account of increases caused by additions to or increases in the cost of labour, materials, manufacture, transport and ancillary charges or currency fluctuations occurring between the date of the quotation and the date upon which the Goods are despatched.

### **Payment**

Unless otherwise agreed in writing, all accounts are due for payment in full without any deduction or set-off by the due date as stated on the invoice. If no date is stated on the invoice, the account is due for payment 28 days after delivery of the Goods which are the subject of the invoice.

Unless otherwise agreed in writing, all sums payable shall be paid in Euro.

Without prejudice to any other right or remedy, the Company reserves the right to suspend immediately the delivery of further supplies if the purchaser fails to settle accounts in accordance with this clause or if there is any outstanding liability owed to it by the purchaser or if, in its opinion, the purchaser will not be able to meet or is unlikely to be able to meet any existing or future commitments to the Company.

The Company reserves the right to charge interest at 3% above the bank rate for the time being of Sydbank on sums unpaid after the due date of the relevant invoice. Interest shall be chargeable for the period from the date when the said invoice became due until the payment date.

The failure of the purchaser to pay any part of the price of the Goods in due time shall entitle the Company to treat such failure as a repudiation of the whole contract relating to such order by the purchaser and to recover damages for such breach of contract.

Notwithstanding anything in these Terms and Conditions expressed or implied to the contrary, in the event of the purchaser ceasing to take supplies from the Company (for whatever reason) or the Company ceasing to deliver supplies to the purchaser (for whatever reason) then and in such circumstances all sums invoiced or to be invoiced in respect of Goods supplied shall fall due for immediate payment.

Any sums which may be owing from time to time by the Company to the purchaser (whether under the same contract or otherwise) may be set off in extinction or diminution of amounts due from time to time to the Company or any associated or related company by the purchaser.

### **Insolvency of Purchaser**

If any distress or execution shall be levied on the purchaser's property or if it shall have a receiving order made against it or make an arrangement or composition with its creditors or (being a company) shall have an order made for the appointment of a receiver or liquidator for winding-up (otherwise than for the purpose of reconstruction or amalgamation) the Company shall have the right (without prejudice to any other right or remedy of the Company) forthwith to repudiate all orders placed with it by the purchaser and all amounts outstanding in respect of Goods shall become payable immediately.

### **Waivers**

Any waiver or indulgence granted by the Company to the purchaser in respect of its rights under these Terms and Conditions regarding any particular breach or series of breaches shall not be



deemed an agreement to grant the same indulgence or make the same waiver of the Company's rights in respect of any further or other breach(es).

### **Right of Set-Off**

The Company is a member of the Fayrefield Group of companies and the purchaser hereby acknowledges that, in the event of the insolvency of the purchaser or a dispute between the parties or in such other circumstances as the Company may determine, it is agreed that sums which may be owing to the purchaser from a member of the Fayrefield Group of companies may be set off in extinction or diminution of such other sums as may be due from the purchaser to the Company.

### **Force Majeure**

To the extent that the execution of any order by the Company is hindered delayed or rendered impossible or uneconomical by reason of force majeure (as hereinafter defined) the Company shall as soon as practicable notify the purchaser and thereupon and to that extent the Company is inhibited the Company shall by deemed mutual consent be excused from performance of the contract and (where applicable) the prices shall be adjusted pro rata.

The purchaser shall in any event reimburse the Company any costs incurred by it in and about the performance of any contract relating to the manufacture or labelling of Goods to the specification of the purchaser if the Company cannot readily utilise or dispose of any stocks of ingredients or manufactured or partly manufactured Goods labels or packaging.

For the purpose of this condition, force majeure shall be deemed to include any cause affecting performance of the contract arising from or attributable to acts or events or circumstances beyond the reasonable control of the Company and in particular, but not exclusively, shall include the following: strikes, lock-outs, stoppages, restraint or withdrawal of labour or other industrial action or shortages of labour, shortages of materials, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic (human or animal) or other natural physical disaster, acts intervention and restraints of government (domestic or other) or other body with due authority.

### **Export Terms**

The interpretation of export trade terms shall be in accordance with Incoterms 2010 (current edition) unless and in so far as Incoterms 2010 and these Terms and Conditions are in accord. In the event of conflict these Terms and Conditions will prevail.

### **Assignment**

This contract is between the Company and the purchaser as principals. The purchaser may not assign the contract without the prior written consent of the Company. The Company may licence or sub-contract any part of its rights and obligations under the contract without the purchaser's consent.

### **Notices**

Any notice or other information required or permitted to be given by either party to the other under these Terms and Conditions shall be per email to [pn@fayrefield.dk](mailto:pn@fayrefield.dk) or in writing addressed



to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and may be given by pre-paid registered post, special delivery or express delivery service or by telex, or by facsimile transmission or by transmission via a reputable private courier company and any notice or information so sent shall be deemed to have been properly and effectively given, if sent by registered post, special delivery, express delivery service or by courier the day delivery is signed for on behalf of the addressee or, if sent by telex, or by facsimile transmission or comparable means of communication, 24 hours after it has been transmitted. Any notice or information sent to the Buyer shall be sent to the address shown on this agreement marked **“for the immediate attention of the Company Secretary”**.

### **Third Party Rights**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Company and the purchaser agree that they do not intend that any terms of any contract entered into by them shall be enforceable by any third party who but for that Act would not have been entitled to enforce such terms.

### **Interpretation and Competent Jurisdiction**

Any contract shall be governed by and interpreted in accordance with Danish Law and the purchaser submits to the exclusive jurisdiction of the courts in Denmark. The Company may at its discretion seek to enforce the contract in any court of competent jurisdiction.

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