

# BROWNS FOODSERVICE



## **BROWNSOVER WAITS LTD AGREEMENT FOR SALE AND TRADE OF CATERING SUPPLIES**

### **1. Introduction**

- (a) These terms and conditions apply to the sale of fresh, chilled or frozen meat, poultry, game or other provisions ("the Products") for delivery to a specific point or points.
- (b) These terms and conditions apply to all orders placed with Brownsover Waits Ltd ("the Company") by the customer named on the last page ("the Customer") and are the only terms on which an order is accepted and will take precedence over any terms or conditions stated to be imposed in any written order by the Customer and orders to the Company are subject to the terms hereof.
- (c) These terms and conditions are subject to the Company's supply charter as notified to the Customer from time to time.
- (d) The Company reserves the right to alter any terms of this agreement at any time upon giving not less than seven days notice in writing. No variations of these terms are accepted by the Company unless confirmed in writing by the Company.

### **2. Basis of Sale**

- (a) Any quotation given by the Company is an invitation only to the Customer to make an order within 30 days of the quotation date. Each order or acceptance of quotation by the Customer shall be deemed to be an offer by the Customer subject to these terms and conditions. All Products offered for sale are subject to the Company accepting the Customers order. No order of the Customer placed with the Company in pursuance of a quotation or otherwise shall be deemed to be accepted by the Company until it has been accepted over the telephone or by electronic communication by an authorised representative of the Company and/or confirmed in writing by the Company.
- (b) The Company's employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Company in writing. In entering into any order, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- (c) Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to storage or utilisation of the Products which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's

own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

- (d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company. All descriptions and illustrations contained in the Company's advertisements and other sales literature are intended merely to present a general impression of the Products described in them and nothing contained in them shall form part of the Contract.
- (e) The Customer acknowledges that there are exclusion clauses and indemnities in these terms. The price of the Products has been calculated on the basis that the liability of the Company has been effectively limited or excluded as appears in these terms. **THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO PARAGRAPHS 2(b), 2((c)), 2((d)), 6((c)) and 9.**

### **3. Term**

- (a) This agreement comes into force on the date set out on the last page and will remain in full force and effect, subject to the remainder of this clause 3, until terminated by any party serving not less than three months' written notice on the others.
- (b) Notwithstanding clause 3(a) above, the Company may terminate this agreement by serving immediate written notice on the Customer if:
  - (i) The Customer commits any material breach of any of the terms of this agreement and that breach (if capable of remedy) is not remedied within 30 days after written notice being given requiring it to be remedied; or
  - (ii) An order is made or a resolution is passed for the winding-up of the Customer or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the Customer or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any part of the Customer's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle a court to make a winding up or bankruptcy order or the Customer takes or suffers any similar or other action in consequence of debt.
- (c) Notwithstanding clause 3(a) above, the Customer may terminate this agreement by serving immediate written notice on the Company if:
  - (i) The Company commits any material breach of any of the terms of this agreement and that breach (if capable of remedy) is not remedied within 30 days after written notice being given requiring it to be remedied; or
  - (ii) An order is made or a resolution is passed for the winding-up of the Company or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the Company or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any part of the Company's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle

a court to make a winding up or bankruptcy order or the Company takes or suffers any similar or other action in consequence of debt.

- (d) Upon termination of this agreement the Customer will immediately pay to the Company all monies held by the Customer on behalf of the Company or otherwise payable to the Company.
- (e) Notwithstanding termination of this agreement, the Company will promptly following termination, issue invoices to the Customer in respect of supplies made up to and including the date of termination.
- (f) Clauses 3(d), 3(e), 11 and 12 shall survive termination of this agreement.

#### **4. Price and Payment**

- (a) In consideration of the Products supplied by the Company to the Customer at the Customer's request, the Customer agrees to make payments promptly, without demand, deduction or set-off.
- (b) All prices quoted are exclusive of VAT unless otherwise stated but inclusive of all other duties, charges, levies, taxes and delivery.
- (c) Where the Products are on the basis of quantity or weight there shall be a tolerance of 10% unless otherwise agreed.
- (d) Prices are as set out in the Company's standard price list as supplied to the Customer from time to time and are subject to change.
- (e) The Company may increase the price before the Products are delivered to the Customer to reflect any increase in cost to the Company including, among other things, taxes and duties, the cost of labour, increase in the base cost of the Products, and other fees and charges.
- (f) Payment is due to the Company by the 10<sup>th</sup> of the month following delivery of the Products unless otherwise agreed between the Company and the Customer and the terms of credit from time to time published by the Company, a copy of which the Customer acknowledges to have received, shall apply. Any payment outside the terms of the Company's credit arrangement with the Customer shall be subject to a charge of interest of 8% on amounts outstanding from the date of invoice to the date of payment.
- (g) Failure to pay by the due date shall entitle the Company to suspend delivery of any unexecuted orders. The time payment of the price of the Products shall be the essence of the agreement.
- (i) If a problem should arise with payments, the Company requires the Customer to give the Company not less than 7 days notice of any breach of its payment obligations before suspending or terminating deliveries of commodities. The Company will use this period to resolve any problems or disputes.

- (j) The Company reserves the right at any time in its absolute discretion to demand immediate payment of any account whether due or not, and to take any legal action to recover the debt and costs.
- (k) The Customer will not be entitled to any discount or retrospective discount should it fail to adhere to the Company's payment terms.

## 5. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel this agreement or reduce the volume of the Products ordered by the Customer (without liability to the Customer) 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), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable quality or default of suppliers provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the agreement.

## 6. Delivery

- (a) The minimum order value is £75.
- (b) Agreed delivery schedule is as set out in the Supply Charter.
- (c) Every effort will be made to comply with completion/delivery dates requested by the Customer and quoted by the Company but no liability (including for any loss of profit, consequential loss or otherwise) is accepted for or arising out of any failure to do so and time shall not be of the essence.
- (d) The Company shall request and the Customer shall give a signed acknowledgement of delivery.
- (e) The risk in the Products remains with the Company up to the receipt and signature of the Customer for the Products and the Customer warrants that any person signing in receipt of the Products shall be duly authorised to do so.
- (f) Where the Customer requires in writing, the Company will specifically warrant by way of written undertaking that the Products have been inspected by a competent authority and have been declared fit for human consumption.
- (g) Notification of any short weight of the Products or damaged Products must be notified to the Company at the time of delivery and any claims in respect of quality within 24 hours of the date of delivery.

- (h) The Company will apply a £50 delivery charge to the Customer for any orders received after the normal cut-off time (as specified in the supply charter) or for deliveries made on non-designated days.

## **7. Escalation Procedure**

- (a) In circumstances which may arise requiring the recall or removal of Products supplied by the Company whether frozen goods, or otherwise, from the Customers premises, the following procedures will be implemented in order to effect the appropriate action in given circumstances:
  - (i) Where there is product damage, packaging damage, visually below standard, incorrect labelling, customer complaint, incorrect sizing, generally unacceptable quality, but in all cases non injurious to health, the Company will collect/recall on the next scheduled delivery.
  - (ii) Where there is a evidence of taint, unpleasant odour, foreign body present, isolated complaint, potentially injurious to health, the Company will collect/recall within 24 hours of receipt of the complaint.
  - (iii) Where manufacturer instigates product recall, pest contamination, decomposition, serious risk of injury to health, foreign body reported with potential risk, plethora of complaints of a serious nature, the Company will collect/recall immediately.
- (b) All claims with respect of quality must be made within 24 hours of delivery.
- (c) All claims with respect of short weight of product or damage must be notified to the Company at the time of delivery.
- (d) It is of utmost importance that in any circumstances described in the above categories that packaging, best before dates and batch codes are noted and intact, together with date of delivery of product by the Company.

## **8. Retention of Title**

- (a) Notwithstanding delivery and the passing of insurance risks or the grant of credit, the legal and equitable title in the Products delivered remain with the Company and shall not pass to the Customer until all monies from time to time due to the Company in respect thereof have been paid in full.
- (b) Until such time as the title in the Products pass to the Customer, the Customer shall hold the products as the Company's fiduciary agent and bailee and keep the Products in proper condition, separately stored from other goods, labelled in such manner as to make the same clearly identifiable as the Company's property and insured for not less than the price payable to the Company,.
- (c) Notwithstanding the terms of clause 8((a)), the Customer shall be entitled to process or use the Products in the ordinary course of the Customers business but shall account to the

Company for such proportionate amount of the proceeds of resale of the Products including proceeds of insurance claims of loss, damage or destruction as is equivalent to the sale price or proportionate amount thereof due to the Company and shall hold such proceeds on trust for the Company and not mix the same with other monies or pay them into any overdrawn bank account and shall ensure that they are at all times identifiable as the Company's monies and in case of tangible proceeds keep them properly stored protected and insured.

- (d) Until payment to the Company and without prejudice to any other remedies available, the Company or its agents shall be entitled immediately after giving notice of its intention to do so, to enter upon the premises of the Customer and repossess any Products of which it has title hereunder and the Customer shall assign to the Company any right or claim of the Company over or against any third party in respect of the Products delivered.

## **9. Liability**

To the fullest extent permitted by law, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express provision of these terms, or any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Customer, except as expressly provided in these terms.

## **10. Cancellation**

- (a) The Company shall be entitled to treat an order as cancelled or any part thereof if delivery of the Products is prevented by any matter outside the control of the Company without any liability on the Company whatsoever.
- (b) The Company reserves the right to request a deposit with any order and cancellation cannot be accepted without prior agreement in writing from the Company and in the event of any such cancellation the right is reserved to apply cancellation charges to reclaim any costs directly or indirectly incurred.
- (c) Termination of the agreement by any party must be served by not less than three months' written notice on the other. Conditions of termination are within clause 3.

## **11. Other**

- (a) The Customer assumes responsibility for ensuring that crates are returned to the driver at the time of delivery. Crates are not permitted to be left with the Customer. If crates are not returned, the Company reserve the right to reclaim from the Customer any costs directly or indirectly incurred.

- (b) Any notice required or permitted to be given by either party to the other under these terms shall be in writing addressed to the Company's registered office or to the Customer's registered office or principal place of business or such other address as may at the relevant time have been notified by either party pursuant to this provision to the party giving the notice.
- (c) No waiver by the Company of any breach of these terms by the Customer shall be construed as a waiver of any subsequent breach of the same or any other provision. No delay by the Company in exercising its rights or remedies under these terms shall prevent or restrict the exercise of such rights or remedies at any time.
- (d) If any provision of these terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and the remainder of the provisions in question shall not be affected thereby.
- (e) The Customer shall not be entitled to assign its rights or transfer any of its rights or obligations under these terms in whole or in part without the prior written consent of the Company.
- (f) The expiration or termination of any contract made under these terms, howsoever ending, shall be without prejudice to any provisions of these terms which are so have effect after the date of such expiration or termination.
- (g) All exclusions or limitations of liability contained in these terms shall be given effect to the fullest extent permitted by law.
- (h) The parties to the agreement do not intend that any term of the agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- (i) The Company acknowledges the Data Protection Act 1998 and agrees to comply and act in accordance with its provisions.
- (j) The terms herein shall take effect and be in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

## **12. Confidentiality**

Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, other than for the purposes of this agreement or except to its professional representatives or advisers or as may be required by law or by legal or regulatory authority, any confidential information concerning the business or affairs of the other party which may have or may in the future come to its knowledge in connection with this agreement and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

**13. Acceptance of Terms**

You confirm your obligation shall continue without limit in time unless varied in writing by the Company.

Please confirm your acceptance of the above terms by signing and returning to:-

Browns Foodservice, 23 Somers Road, Rugby, Warwickshire CV22 7DG  
Please mark for the attention of Mr Ian Widdows

or by E-signing the document for return.

**IN WITNESS** whereof this agreement has been entered into by the parties or their duly authorised representatives on the date stated at the beginning.

Signed ..... Name .....

Title .....

Signed on behalf of .....

Date .....