

# TRADING TERMS

## 1. Interpretation

1.1 In these Trading Terms:

'BUYER' means the person who buys or agrees to buy the Goods from Triple Eight

'GOODS' means the goods (including any instalment of the goods or any parts for them) which Triple Eight is to supply in accordance with these Trading Terms

'TRIPLE EIGHT' means Triple Eight Supplies Ltd (registered in England under number 03520553)

'TRADING TERMS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and Trading Terms agreed in writing between the Buyer and Triple Eight

'CONTRACT' means the contract for the purchase and sale of the Goods

'WRITING' includes telex, cable, fax, e-mail and comparable means of communication.

1.2 Any reference in these Trading Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Trading Terms are for convenience only and shall not affect their interpretation.

## 2. Basis of the sale

2.1 These Trading Terms apply to the Contract to the exclusion of all other terms and conditions including any terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 Each order or acceptance of a quotation for Goods by the Buyer from Triple Eight shall be deemed to be an offer by the Buyer to buy Goods subject to these Trading Terms.

2.3 No order placed by the Buyer shall be deemed to be accepted by Triple Eight until a written acknowledgement of order is issued by Triple Eight or (if earlier) Triple Eight delivers the Goods to the Buyer.

2.4 Any quotation is given on the basis that no Contract shall come into existence until Triple Eight despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that Triple Eight has not previously withdrawn it.

2.5 No variation to these Trading Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and Triple Eight.

2.6 Triple Eight's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Triple Eight in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.7 Any advice or recommendation given by Triple Eight or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by Triple Eight is followed or acted upon entirely at the Buyer's own risk, and accordingly Triple Eight shall not be liable for any such advice or recommendation which is not so confirmed.

2.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Triple Eight shall be subject to correction without any liability on the part of Triple Eight.

### 3. Orders and specifications

3.1 The Buyer shall be responsible to Triple Eight for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Triple Eight any necessary information relating to the Goods within a sufficient time to enable Triple Eight to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in Triple Eight's written acknowledgement of order or delivery note.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by Triple Eight in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Triple Eight against all loss, damages, costs and expenses awarded against or incurred by Triple Eight in connection with or paid or agreed to be paid by Triple Eight in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Triple Eight's use of the Buyer's specification.

3.4 Triple Eight reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements.

3.5 No order which has been accepted by Triple Eight may be cancelled by the Buyer except with the agreement in Writing of Triple Eight and on terms that the Buyer shall indemnify Triple Eight in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Triple Eight as a result of cancellation.

## 4. Price of the goods

4.1 The price of the Goods shall be the price stated in Triple Eight's written acknowledgement of order, or, where there is no such written acknowledgment of order, the price listed in Triple Eight's price list current at the date of delivery or deemed delivery. Where the Goods are supplied for export from the United Kingdom, Triple Eight's export price list shall apply.

4.2 Triple Eight reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Triple Eight which is due to any factor beyond the control of Triple Eight (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Triple Eight adequate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Triple Eight.

4.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to Triple Eight before the due payment date.

## 5. Terms of payment

5.1 Subject to any special terms agreed in Writing between the Buyer and Triple Eight, Triple Eight shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of

the Goods, in which event Triple Eight shall be entitled to invoice the Buyer for the price at any time after Triple Eight has notified the Buyer that the Goods are ready for collection or (as the case may be) Triple Eight has tendered delivery of the Goods.

5.2 Unless otherwise agreed the Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 7 days of the date of Triple Eight's invoice, and Triple Eight shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Triple Eight, Triple Eight shall be entitled to:

5.3.1 cancel the Contract and all other contracts with the Buyer or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Triple Eight) as Triple Eight may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above HSBC Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at Triple Eight's storage premises at any time after Triple Eight has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by Triple Eight, by Triple Eight delivering the Goods to that place.

6.2 Any dates specified for delivery of the Goods are approximate only and Triple Eight shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Triple Eight in writing. The Goods may be delivered by Triple Eight in advance of the specified delivery date upon giving reasonable notice to the Buyer.

6.3 Where delivery of the Goods is to be made by Triple Eight in bulk, Triple Eight reserves the right to deliver up to ten per cent more or ten per cent less

than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Triple Eight to deliver any one or more of the instalments in accordance with these Trading Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If Triple Eight fails to deliver the Goods (or any instalment) for any reason other than any cause beyond Triple Eight's reasonable control or the Buyer's fault, and Triple Eight is accordingly liable to the Buyer, Triple Eight's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.6 If the Buyer fails to take delivery of the Goods or fails to give Triple Eight adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Triple Eight's fault) then, without prejudice to any other right or remedy available to Triple Eight, Triple Eight may:

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at Triple Eight's storage premises, at the time when Triple Eight notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at Triple Eight's storage premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Triple Eight has tendered delivery of the Goods; or

7.1.3 in the case of Goods where title is to be transferred before or during shipment on terms to be agreed.

7.2 Unless otherwise agreed pursuant to 7.1.3 notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Trading Terms, title and property in the Goods, including full legal and beneficial

ownership, shall not pass to the Buyer until Triple Eight has received in cash or cleared funds payment of the full price of the Goods and all other goods agreed to be sold by Triple Eight to the Buyer for which payment is then due. Payment of the full price of the goods agreed to be sold by Triple Eight to the Buyer (including the Goods) shall include the amount of any interest or other sum payable under the terms of this Contract and all other contracts between Triple Eight and the Buyer under which such goods are agreed to be sold.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Triple Eight's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Triple Eight's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Triple Eight shall be entitled at any time to require the Buyer to deliver up the Goods to Triple Eight 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.

7.5 The Buyer 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 Triple Eight, but if the Buyer does so all moneys owing by the Buyer to Triple Eight shall (without prejudice to any other right or remedy of Triple Eight) forthwith become due and payable.

## 8. Warranties and liability

8.1 Subject to the Trading Terms set out below Triple Eight warrants that the Goods will correspond with their description and comply with all statutory requirements at the time of delivery.

8.2 Subject as expressly provided in these Trading Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, Trading Terms or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.3 Where the Goods are purchased by a person who "deals as consumer" within the meaning of the Unfair Contract Terms Act 1977 the statutory rights of the Buyer are not affected by these Trading Terms.

8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with description shall (whether or not delivery is refused by the Buyer) be notified to Triple Eight

within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Triple Eight accordingly, the Buyer shall not be entitled to reject the Goods and Triple Eight shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to correspond with description is notified to Triple Eight in accordance with these Trading Terms, Triple Eight shall be entitled to replace the Goods (or the part in question) free of charge or, at Triple Eight's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but Triple Eight shall have no further liability to the Buyer.

8.6 Except in respect of death or personal injury caused by Triple Eight's negligence, Triple Eight shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or indirect, special or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Triple Eight, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of Triple Eight under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Trading Terms.

8.7 Triple Eight shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Triple Eight's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Triple Eight's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Triple Eight's reasonable control:

8.7.1 act of God, terrorism, explosion, flood, tempest, earthquake, fire or accident;

8.7.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority or their agents or agencies whether in the U.K., European Union or anywhere else in the World;

8.7.4 import or export regulations or embargoes;

- 8.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Triple Eight or of a third party);
- 8.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.7.7 power failure or breakdown in machinery.

## 9. Indemnity

9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, Triple Eight shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

9.1.1 Triple Eight is given full control of any proceedings or negotiations in connection with any such claim;

9.1.2 the Buyer shall give Triple Eight all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Triple Eight (which shall not be unreasonably withheld);

9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

9.1.5 Triple Eight shall be entitled to the benefit of, and the Buyer shall accordingly account to Triple Eight for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

9.1.6 without prejudice to any duty of the Buyer at common law, Triple Eight shall be entitled to require the Buyer to take such steps as Triple Eight may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Triple Eight is liable to indemnify the Buyer under this clause.

## 10. Insolvency of buyer



10.1 This clause applies if:

10.1.1 the Buyer suspends or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

10.1.2 the Buyer commence negotiations with all or any class of its creditors with a view to rescheduling any of its debts; or

10.1.3 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes subject to a bankruptcy petition or order or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.4 an encumbrancer takes possession, or a receiver, manager, administrator or administrative receiver is appointed, of the whole or any part of the undertaking, the property or assets of the Buyer; or

10.1.5 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.6 Triple Eight reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without prejudice to any other right or remedy available to Triple Eight, Triple Eight shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 11. Export terms

11.1 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

11.2 Triple Eight shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

11.3 Unless otherwise agreed the Buyer shall be responsible for arranging for testing and inspection of the Goods at Triple Eight's premises before

shipment. Triple Eight shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

## 12. General

12.1 Any notice required or permitted to be given by either party to the other under these Trading Terms shall be 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. Any such notice may be delivered personally or by first class pre-paid letter or e-mail (confirmed by first class pre-paid letter or fax) or fax and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by fax or e-mail at the time of transmission.

12.2 No waiver by Triple Eight of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of these Trading 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 Trading Terms and the remainder of the provision in question shall not be affected.

12.4 Any dispute arising under or in connection with these Trading Terms or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the Director-General for the time being of British Frozen Foods Federation.

12.5 The headings in this Contract are for convenience only and shall not affect its interpretation.

12.6 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.

12.7 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.