

ICELAND SEAFOOD BARRACLOUGH LIMITED
CONDITIONS OF SALE (2017 Edition)

Buyer's attention is drawn in particular to condition 12.

1. INTERPRETATION

1.1. In these Conditions the following words shall have the following meanings:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

“**Buyer**” means the person, firm or company who purchases the Goods from Seller.

“**Conditions**” means the standard terms and conditions of sale set out in this document as amended from time to time in accordance with Condition 2.3.

“**Contract**” means the contract between Seller and Buyer for the sale and purchase of the Goods, in accordance with these Conditions.

“**Goods**” means any goods agreed in the Contract to be supplied to Buyer by Seller (including any part or parts of them).

“**Group**” means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

“**Order**” means Buyer's purchase order form, Buyer's written acceptance of Seller's quotation or overleaf as the case may be.

“**Seller**” means Iceland Seafood Barraclough Limited (registered number 01533919).

1.2. Words in the singular include the plural and vice versa.

1.3. A reference to **writing** or **written** includes emails.

2. APPLICATION OF CONDITIONS

2.1. These Conditions shall cancel and supersede any earlier version or edition of conditions of sale of the Company.

2.2. These Conditions shall govern the Contract to the exclusion of any terms or conditions which Buyer purports to apply or incorporate under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing and Buyer waives any right which it might have to rely on such terms or conditions.

2.3. No variation to these Conditions or any representation about the Goods shall have effect unless expressly agreed in writing and signed by a duly authorised representative of Seller.

- 2.4. Each Order for Goods by Buyer to Seller shall be deemed to be an offer by Buyer to purchase Goods subject to these Conditions. Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.5. No Order placed by Buyer shall be deemed to be accepted by Seller until a written acknowledgement of Order is issued by Seller or (if earlier) Seller delivers the Goods to Buyer or Seller notifies Buyer that the Goods are ready for collection, at which point the Contract shall come into existence.
- 2.6. Any quotation is given on the basis that no contract will come into existence until Seller despatches a written acknowledgement of Order to Buyer. Any quotation is valid for the period stated in the quotation, provided that Seller has not previously withdrawn it.

3. FORECASTS

- 3.1. Where Seller has agreed to forecasts from Buyer, the following Conditions shall apply.
- 3.2. Buyer shall give Seller not less than 14 days before the start of each month, its written forecast of the Goods it expects to purchase from Seller during the following month. Buyer shall act in good faith when forecasting its requirements for Goods.
- 3.3. If Seller expects that it will be unable to meet Buyer's forecasted requirements, Seller shall inform Buyer as soon as practicable.
- 3.4. If Seller accepts a forecast provided by Buyer under Condition 3.2 and Buyer then places an Order for an amount of Goods in excess of such forecast, Seller shall not be obliged to provide such excess quantity of Goods, but at Seller's sole discretion may provide such excess Goods.
- 3.5. If Seller accepts a forecast provided by Buyer under Condition 3.2 and Buyer then places an Order for an amount of Goods which represents less than 95% of such forecast, Buyer shall be liable to pay Seller an amount equal to the difference between the value of Goods in the Order and the value of the forecasted Goods, less any proceeds of sale received by Seller in disposing of the forecasted Goods not ordered by Buyer.

4. DESCRIPTION

- 4.1. The description of the Goods shall be as set out in Seller's quotation or acknowledgement of Order.
- 4.2. All samples, drawings, descriptive matter, specifications and advertising issued by Seller and any descriptions or illustrations contained in Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea

of the Goods described in them. They shall not form part of the Contract and the sale shall not be a sale by sample.

5. DELIVERY

- 5.1. Unless otherwise agreed in writing by Seller (including if Buyer collects the Goods from Seller), delivery of the Goods shall be to the address set out in Seller's acknowledgement of Order or quotation.
- 5.2. Completion of delivery shall occur on the arrival of the Goods at the location as set out in Condition 5.1, unless Buyer collects the Goods from Seller in which case delivery shall occur on the loading of the Goods at Seller's premises.
- 5.3. Any date specified by Seller for delivery of the Goods is an estimate only and time for delivery is not of the essence. If no date has been so specified, delivery will be within a reasonable time. Seller shall not be liable for any delay in delivery of the Goods that is caused by circumstances outside the control of Seller or which is due to Buyer's failure to provide Seller with adequate delivery instructions or any other instructions that are relevant to the supply of Goods.
- 5.4. Subject to the other provisions of these Conditions, Seller shall not be liable for any loss (including but not limited to loss of profit and indirect or consequential loss), costs, damages, charges or expenses caused directly or indirectly by any delay by Seller in the delivery of the Goods nor will any delay entitle Buyer to terminate the Contract unless the delay exceeds 30 days beyond the delivery date agreed between Seller and Buyer. Termination of the Contract shall be Buyer's sole remedy in such circumstances.
- 5.5. Seller may deliver the Goods by separate instalments and invoice Buyer for the price of the Goods delivered. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5.6. Without prejudice to Condition 5.5, if Seller agrees to permit Buyer to call off the Goods against the Contract:
 - (a) Buyer agrees to call off the Goods within the period agreed with Seller or if no such period has been agreed, within a reasonable period of time; and
 - (b) Seller will invoice Buyer for the price of the Goods of each call off but shall be entitled to invoice Buyer for the balance of the Contract price at any time, notwithstanding that Buyer may not have called off all the Goods the subject of the Contract.
- 5.7. Where the Goods are to be delivered or called off in instalments, each delivery shall constitute a separate Contract and failure by Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by Buyer in respect of

any one or more instalment shall not entitle Buyer to treat the Contract as a whole as repudiated.

- 5.8. If for any reason Buyer will not accept delivery of any of the Goods, fails to collect the Goods within 2 days after being notified by Seller that they are ready for collection or fails to call off the Goods in accordance with Condition 5.6 (where the Seller has agreed to such call off), or Seller is unable to deliver the Goods on time because Buyer has not provided appropriate instructions, documents, licences or authorisations, risk in the Goods will pass to Buyer and Seller may store them until actual delivery and Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

6. SHORTFALLS AND NON-DELIVERY

- 6.1. The quantity of any consignment of Goods as recorded by Seller upon despatch from Seller's place of business shall be conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- 6.2. Buyer agrees to accept and pay at the Contract rate for plus/minus 5% of the quantity of the Goods ordered by Buyer. Subject thereto, Seller shall not be liable for any shortfall in the delivery of Goods unless written notice is given to Seller within 3 days of delivery. Any liability of Seller for any shortfall in the delivery of the Goods shall be limited to making up the shortfall in the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 6.3. Seller shall not be liable for any non-delivery of Goods unless written notice is given to Seller within 7 days of the date of the invoice submitted to Buyer in respect of the non-delivered Goods. Any liability of Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. PRICE

- 7.1. Unless otherwise agreed in writing by Seller, the price for the Goods shall be Seller's delivered price set out in Seller's acknowledgement of Order or quotation.
- 7.2. The price for the Goods shall be exclusive of any value added tax which Buyer shall pay in addition on or before the date it is due to pay for the Goods.
- 7.3. The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to Buyer and Buyer shall pay in addition on or before the date it is due to pay for the Goods.
- 7.4. Seller may, by giving notice to Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other costs);
- (b) any request by Buyer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of Buyer or failure of Buyer to give Seller adequate or accurate information or instructions.

8. PAYMENT

- 8.1. Subject to Condition 8.2, Seller's invoices shall be paid in pounds sterling within 28 days of the date of invoice. Time for payment shall be of the essence. No payment shall be deemed to have been received until Seller has received the full amount in cleared funds.
- 8.2. All sums payable to Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 8.3. Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.4. If Buyer fails to pay Seller any sum due pursuant to the Contract Buyer will be liable to pay interest to Seller on such sum from the due date for payment at the rate of 3% above the Overnight London Interbank Offered Rate (LIBOR) as published by the British Bankers Association for the day for which LIBOR is to be determined (or the immediately preceding banking day if that day is not a banking day), accruing on a daily basis until payment is made, whether before or after judgment.

9. RISK AND OWNERSHIP

- 9.1. The Goods shall be at the risk of Buyer from the completion of delivery, determined in accordance with Condition 5.2 (or if relevant, Condition 5.8).
- 9.2. Ownership of the Goods shall not pass to Buyer until Seller has received in full in cash or cleared funds:
 - (a) all sums payable in respect of the Goods and all other sums which are or which become payable to Seller from Buyer on any account including any interest on such sums; and
 - (b) Buyer resells the Goods in which case ownership to the Goods shall pass to the Buyer at the time specified in Condition 9.4.
- 9.3. Until ownership of the Goods has passed to Buyer, Buyer shall:
 - (a) store the Goods (at no cost to Seller) separately to other goods of Buyer or any third party in a way that they remain readily identifiable as Seller's property;

- (b) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (c) maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;
 - (d) notify Seller immediately if it becomes subject to any of the events listed in Condition 9.5; and
 - (e) give Seller such information relating to Goods as Seller may require from time to time.
- 9.4. Buyer may resell the Goods before ownership has passed to it solely on the condition that any sale shall be on Buyer's own behalf in the ordinary course of Buyer's business at full market value to a third party purchaser (and not to an Affiliate of the Buyer or any member of Buyer's Group) and Buyer shall deal as principal (and not as Seller's agent) when making such sale, and ownership of the Goods shall pass from Seller to Buyer immediately before the time at which resale by Buyer occurs.
- 9.5. Buyer's right to possession of the Goods shall terminate immediately and all sums shall become due and payable immediately and Buyer agrees that Seller shall have the right to rescind or terminate the Contract if:
- (a) Buyer takes any step or action in connection with its entering into administration, convenes a meeting of or enters into any composition or arrangement with its creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of Buyer or notice of intention to appoint an administrator is given by Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented for the winding up of Buyer or for the granting of an administration order in respect of Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of Buyer; or
 - (b) Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Seller and Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or Buyer ceases to trade.
- 9.6. Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Seller.

- 9.7. Buyer grants Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where Buyer's right to possession has terminated, to recover them.
- 9.8. Where Seller is unable to determine whether any Goods are the goods in respect of which Buyer's right to possession has terminated, Buyer shall be deemed to have sold all goods of the kind sold by Seller to Buyer in the order in which they were invoiced to Buyer.
- 9.9. On termination of the Contract, howsoever caused, Seller's (but not Buyer's) rights contained in this Condition 9 shall remain in effect.

10. WARRANTY

- 10.1. Seller warrants (subject to the other provisions of these Conditions) that upon delivery the Goods will comply with their description and any applicable specification of Seller for the Goods.
- 10.2. Seller shall not be liable for a breach of the warranty in Condition 10.1 if:
- (a) Buyer does not give written notice of any defect to Seller within 7 days of delivery;
 - (b) Seller is not given a reasonable opportunity to examine the Goods and Buyer (if asked to do so by Seller) does not return the Goods to Seller's place of business for the examination to take place there;
 - (c) Buyer resells or uses the Goods after giving notice of any defect;
 - (d) the defect arises because Buyer failed to follow Seller's instructions as to the storage or use of the Goods or good trade practice; or
 - (e) the defect arises as a result of Buyer's wilful damage, negligence or abnormal storage or working conditions.
- 10.3. Subject to Condition 10.2, if any of the Goods do not conform with the warranty in Condition 10.1 Seller shall at its option replace such Goods or refund the price of such Goods at the pro rata Contract rate and shall have no further liability for breach of the warranty in Condition 10.1 in respect of such Goods. If Seller so requests, Buyer shall at Seller's reasonable expense return the Goods which are defective to Seller.

11. TERMINATION

- 11.1. Without limiting its other rights or remedies, Seller may terminate this Contract with immediate effect by giving written notice to Buyer if:
- (a) Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;

- (b) in circumstances arising as set out in Condition 9.5;
 - (c) Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) Buyer's financial position deteriorates to such an extent that in Seller's opinion Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2. Without limiting its other rights or remedies, Seller may suspend provision of the Goods under the Contract or any other contract between Buyer and Seller if Buyer becomes subject to any of the events listed in Condition 11.1(a) to Condition 11.1(d), or Seller reasonably believes that Buyer is about to become subject to any of them, or if Buyer fails to pay any amount due under this Contract on the due date for payment or Buyer exceeds any credit terms which have been agreed by Seller.
- 11.3. Without limiting its other rights or remedies, Seller may terminate the Contract with immediate effect by giving written notice to Buyer if Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.4. On termination of the Contract for any reason Buyer shall immediately pay to Seller all of Seller's outstanding unpaid invoices and interest.
- 11.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

12. LIMITATION OF LIABILITY

- 12.1. Subject to Conditions 5, 6 and 10, the following provisions of Condition 12 set out the entire liability of Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of any:
- (a) breach of these Conditions;
 - (b) use made or resale by Buyer of any of the Goods, or of any product incorporating the Goods; and
 - (c) representation, statement or tortious act or omission, including negligence, arising under or in connection with the Contract.
- 12.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3. Nothing in these Conditions excludes or limits the liability of Seller:

- (a) for death or personal injury caused by Seller's negligence or negligence of its employees, agents or sub-contractors;
- (b) defective products under the Consumer Protection Act 1987;
- (c) for any matter which it would be illegal for Seller to exclude or attempt to exclude its liability;
- (d) for fraud or fraudulent misrepresentation; or
- (e) breach of the terms implied by section 12 of the Sale of Goods Act 1979.

BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 12.4

12.4. Subject to Conditions 12.2 and 12.3:

- (a) Seller shall not be liable to Buyer whether in contract, tort (including negligence) breach of statutory duty, or otherwise for economic loss, loss of profit, loss of anticipated savings, goodwill or business opportunity or for production downtime or any type of indirect or consequential loss or damage or any costs, expenses or other claims which arise out of or in connection with the Contract; and
- (b) Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods the subject of the claim.

13. EVENTS BEYOND SELLER'S CONTROL

Seller shall not be liable for delay in performing or failure to perform any of its obligation under the Contract if such delay is due to circumstances beyond the reasonable control of Seller including, without limitation, acts of God, governmental actions (including for the avoidance of doubt any changes to fishing quotas), war, 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), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or any material change in harvest expectations (howsoever caused), provided that if the event in question continues for a continuous period in excess of 90 days, either party shall be entitled to terminate the Contract by notice in writing to the other party.

14. GENERAL

14.1. Buyer shall not assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract or any part of it without the prior written consent of Seller.

- 14.2. Seller shall be entitled to assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract or any part of it to any person, firm or company.
- 14.3. Buyer shall not use Seller's name, logo or other intellectual property rights of Seller in advertising or publicity without Seller's prior written consent.
- 14.4. If any provision or part of a provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.5. Failure or delay by 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, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 14.6. Any waiver by Seller of any breach of, or any default under, any provision of the Contract by 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.
- 14.7. Each right or remedy of Seller under the Contract is without prejudice to any other right or remedy of Seller whether or not under the Contract.
- 14.8. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its 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 notice.
- 14.9. Subject to Conditions 14.1 and 14.2, nothing in these Conditions confers on any third party any benefit or any right to enforce any of these Conditions.
- 14.10. Nothing in the Contract excludes the statutory rights of consumers.
- 14.11. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.