

**BOWLANDER LIMITED AND BOWLANDER INGREDIENTS LIMITED**

**TERMS AND CONDITIONS FOR SALE AND SUPPLY OF GOODS**

**1. DEFINITIONS**

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

- (a) **Changed Order:** means an Order changed in accordance with clause 3.3;
- (b) **Confirmation:** written acceptance of the Order, containing the price of the Goods and estimated dispatch and delivery information;
- (c) **Delivery:** delivery is deemed to have taken place when We deliver the Goods to the address that you gave Us or make the Goods available for collection in accordance with Your instructions;
- (d) **Event Outside Our Control:** is defined in clause 11.2;
- (e) **Goods:** the goods that We are selling to you as set out in the Confirmation;
- (f) **Order:** your order for the Goods;
- (g) **Specification:** any specification for the Goods that is agreed in writing between You and Us;
- (h) **Terms:** the terms and conditions set out in this document; and
- (i) **We/Our/Us:** Bowlander Limited (Company Number: 02473578) or Bowlander Ingredients Limited (Company Number: 05679655) both of whose registered office is at Low House Farm, Wharfe, Austwick LA2 8DQ
- (j) **You/Your:** the person firm or company who places an Order for or buys Goods from Us

1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

1.3 We consider that these Terms and the Confirmation constitute the whole agreement between you and Us.

**2. OUR CONTRACT WITH YOU**

2.1 These are the terms and conditions on which We supply Goods to You.

2.2 By placing an Order with us you are offering to purchase the Goods on the basis of these Terms.

2.3 These Terms prevail over any terms and conditions contained or referred to in any communication from You, and any purported terms and conditions which you seek to impose are expressly rejected by Us.

2.4 Please ensure that you read these Terms carefully, and check that the details of your Order are complete and accurate, before we issue the Confirmation. If you think that there is a mistake, please contact Us to discuss that mistake. Any changes to the Terms and Conditions and/or the Confirmation shall only be valid if in writing and authorised by Us.

- 2.5 You are responsible for ensuring the terms of the Order and any applicable Specification are complete and accurate.
- 2.6 When you place an Order, this does not mean We have accepted the Order. Our acceptance of the Order will take place as described in clause 2.7. If We are unable to supply you with the Goods, We will inform you of this and We will not process the Order.
- 2.7 A contract will come into existence between you and Us and these Terms will become binding on you and Us when We issue you with the Confirmation. This may be sent to you by fax, email or post.
- 2.8 If any of these Terms conflict with any term of the Confirmation, the Confirmation will take priority over the conflicting terms.
- 2.9 We shall assign you an order number and inform you of it in the Confirmation. Please quote the order number in all subsequent correspondence with Us relating to the Confirmation.
- 2.10 The images of the Goods on Our website and in Our catalogue or brochure are for illustrative purposes only. Although We have made every effort to display the colours accurately, We cannot guarantee that your computer's display of the colours or the printed pictures accurately reflect the colour of the Goods. Your Goods may vary slightly from those images.
- 2.11 These Terms and the Confirmation constitute the entire agreement between Us and You. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of Us which is not set out in these Terms and/or the Confirmation. We and You agree that You will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 3. CHANGES TO ORDER OR TERMS**
- 3.1 We may revise these Terms from time to time in the following circumstances:
- (a) changes in how We accept payment from you;
  - (b) changes in relevant laws and regulatory requirements
- 3.2 If We have to revise these Terms under clause 3.1, We will give you at least one month's written notice of any changes to these Terms before they take effect. You can choose to cancel the Order in accordance with clause 12.
- 3.3 You may make a change to the Order by contacting Us before the Confirmation is issued;
- 3.4 Where this means a change in the total price of the Goods or there are costs of the change, We will notify you of the amended price or costs. You can choose to cancel the Order in these circumstances within 2 hours of our informing you of the charges, such cancellation to be in writing.
- 4. DELIVERY AND COLLECTION OF GOODS**
- 4.1 Timescales for delivery and delivery charges will vary depending on the availability of the Goods and your address. Please allow for extra time for deliveries to the Scottish Highlands and Islands. A minimum 10 days lead time is required for bespoke products.
- 4.2 In the Confirmation We will provide you with an estimated delivery date and for the avoidance of doubt time shall not be of the essence. Occasionally Our delivery to you may be affected by an Event Outside Our Control. See clause 11 for Our responsibilities when this happens.

- 4.3 The Goods shall be delivered to the address you gave Us.
- 4.4 If it is agreed that You will collect the Goods we will notify you when and where the Goods are available for collection.
- 4.5 If no one is available at your address to take delivery, We will leave you a note that the Goods have been returned to Our premises, in which case, please contact us to rearrange delivery.
- 4.6 If We are not able to deliver the whole of the Order at one time, for instance (but not limited to) due to operational reasons or shortage of stock, We will deliver the Order in instalments. We will not charge you extra delivery costs for this. However, if you ask Us to deliver the Order in instalments, We may charge you extra delivery costs. Each instalment shall constitute a separate contract governed by these Terms. If We are late delivering an instalment or one instalment is faulty, that will not entitle you to cancel any other instalment.
- 4.7 The Goods will be your responsibility in terms of all applicable risks from:
- (a) Delivery; or
  - (b) when you take possession of the Goods; or
  - (c) where we have left you a note in accordance with clause 4.4.
- 4.8 If You fail to take delivery or fail to give adequate delivery instructions then additional charges and administration fees will be charged.

**5. TITLE**

- 5.1 Title in the Goods will pass to you only when We have received payment in full
- 5.2 Until title passes You will hold the Goods as bailee for Us and shall store them and mark them so that they can be identified as Our property. We may recover the Goods at any time before title passes to You.

**6. QUALITY**

- 6.1 We warrant that upon delivery the Goods shall
- (a) conform in all material respects with their description and any applicable Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979
  - (d) be fit for any purpose expressly held out by Us.
  - (e) Comply with the requirements, where applicable, of the Food Safety Act 1990
- 6.2 Subject to Clause 6.3 , if:
- (a) You give notice in writing to the Us in accordance with Clause 7 that some or all of the Goods do not comply with the warranty set out in Clause 6.1;
  - (b) We are given a reasonable opportunity of examining such Goods; and
  - (c) You return such Goods to an address designated by Us
- then We shall, at Our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 6.3 We shall not be liable for the Goods' failure to comply with the warranty set out in Clause 6.1 in any of the following events:
- (a) You make any further use of such Goods after giving notice in accordance with Clause 6.2;
  - (b) the defect arises because You failed to follow the Our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of Us following any drawing, design or Specification supplied by You;
  - (d) You alter or repair such Goods without Our written consent;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description **OR** the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

## **7. ACCEPTANCE AND CLAIMS PROCEDURE**

- 7.1 You must check that the quantity, condition and Specification of the Goods correspond to the Order and are delivered at the correct temperature before signature of the delivery note
- 7.2 Claims in respect of short deliveries or condition or non-compliance with the Specification in respect of the Goods must be made to Us within 24 hours of the time of the delivery which gives rise to the claim. You must retain the damaged Goods for inspection and collection.
- 7.3 Any Court proceedings under this contract arising out of or as a consequence of short delivery, condition or non-conformance with the specification must be commenced within 12 months of the date agreed for delivery.

## **8. PRICE AND PAYMENT**

- 8.1.1 The price of the Goods will be set out in the Confirmation. Our prices may change at any time, but, subject to Clause 8.6, price changes will not affect Orders for which you have received a Confirmation.
- 8.1.2 We reserve the right to make a further charge for provision of technical information in accordance with Clause 9.1.
- 8.2 Goods must be paid for proforma for the first three months and thereafter unless agreed otherwise in writing.
- 8.3 We reserve the right to refuse to deliver Goods if payments are overdue.
- 8.4 Payment must be made without any set off or deductions.
- 8.5 Prices include VAT. However, if you make a Changed Order and the rate of VAT changes between the date of the Order and the Changed Order, We will adjust the rate of VAT that you pay.
- 8.6 Notwithstanding anything else stated in these conditions, as from the end of the transition period from the exit of the United Kingdom from the European Union, even in case of a deal between the United Kingdom and the European Union ("Brexit"), the following clause will apply:

In the event that Brexit may lead to additional costs or prices for Us or our suppliers (for example, without being limited, as a result of duties, taxes and trade tariffs) or additional waiting periods (for example, without being limited, as a result of clearance) or any other adverse impact on Our or our suppliers' operations or logistics, We reserve the right to review and amend the conditions mentioned in the price offer without any sanctions or liability.

- 8.7 Unless stated otherwise the prices for the Goods include delivery costs. Any additional delivery charge will be stated in the Confirmation.
- 8.8 If you do not make any payment due to Us by the due date for payment, We may charge interest and late payment charges to you on the overdue amount under the Late Payment of Commercial Debts Regulations. Interest is at the rate of 8% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount.

## **9 SPECIFICATION**

- 9.1 All Goods will be supplied with our standard written Specification applicable to those Goods. We reserve the right to make a charge if we are required by You to complete your own form of Specification or supply technical information relating to the Goods or samples in addition to that included within our own Specification.
- 9.2 If the Good are Manufactured in accordance with a Specification supplied by You, You will indemnify Us against all liabilities, costs, expenses, damages and losses (including all direct, indirect or consequential losses, loss of profit, loss of reputation and all interest and penalties and legal and other professional costs and expenses) suffered or incurred by Us in connection with any claim, allegation, investigation, or regulatory or enforcement action (including a fine or other penalty) made taken or levied against Us relating to or arising out of
  - 9.2.1 Actual or alleged infringements of a third party's intellectual property rights
  - 9.2.2 The manufacture, production, sale or supply of:
    - 9.2.2.1 Defective products
    - 9.2.2.2 Goods which fail to comply with any express or implied terms, warranties, or representations given or made by You to a third party as to quality, description, or fitness for a particular purpose
    - 9.2.2.3 Goods which fail to comply with any applicable regulatory requirements arising out of the Specification.
- 9.3 We reserve the right to amend the Specification of the Goods at any time before delivery of the Goods provided that we use our reasonable endeavours to procure that the Goods be as similar to the previous specification as reasonably practicable and that You are informed of any changes that affect the safety, quality or legality prior to delivery
- 9.4 Unless stated otherwise in writing all Goods supplied by us will be manufactured and packed in a low care environment, and no warranty is given that they will be suitable for use in a high care or high risk environment or product and We give no warranty that they are ready to eat. We do not accept any liability in respect of any claim made about the Goods which has not been confirmed by Us in writing and in respect of which documentation to substantiate the claim is in place.

## **10 OUR LIABILITY TO YOU**

- 10.1 Many of the Goods need to be stored in accordance with specific requirements. If We provide you with a Specification and you do not store the Goods in accordance with this Specification We shall not be liable to you for any resulting losses caused by this failure.
- 10.2 We do not manufacture any of the products we sell. We will supply to You with a technical specification in respect of the Goods provided to us by the manufacturer, but we accept no liability for any errors, omissions, misstatements or mistakes in such technical specification, or any non conformance of the Goods with the technical specification apart from as stated in clause 6.
- 10.3 We do not warrant that Goods supplied are fit for any particular purpose unless that purpose is communicated to us in writing at the time of placing the Order.
- 10.4 Save as precluded by law We have no liability to you for any indirect or consequential loss, damages or expenses (including loss of profit, loss of business, business interruption, loss of business opportunity or goodwill) and We shall have no liability to pay any money to you by way of damages other than to refund you the amount paid by you for the Goods.
- 10.5 We do not exclude or limit in any way Our liability for:
- 10.5.1 death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;
- 10.5.2 fraud or fraudulent misrepresentation.
- 10.5.3 Any other matter in respect of which it would be unlawful for Us to restrict or exclude Our liability.
- 10.6 Subject to the above Our 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 between us shall be limited to the contract price of the Order or Orders giving rise to the alleged liability.

## **11 EVENTS OUTSIDE OUR CONTROL**

- 11.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 11.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation foreign exchange fluctuations, increases in taxes and duties, availability of materials and manufacturing resources, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 11.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:
- 11.3.1 We will contact you as soon as reasonably possible to notify you; and
- 11.3.2 Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our delivery of Goods to you, We will arrange a new delivery date with you after the Event Outside Our Control is over.

## **12. Bar Codes**

- 12.1 The printing of bar codes on Goods supplied by Us is not required under any contract between Us and You. We will when possible endeavour to observe the rules of the Article

Numbering Association, but will not be liable to You (whether in negligence or otherwise) for any loss, damage or expense attributable to the absence or error in such bar code printing.

**13. Consumer Complaints**

- 13.1 In addition to the steps required under clause 7 hereof You shall immediately notify Us in the event that You receive a complaint from a consumer and undertake to Us that neither You or Your employees or agents shall make any statement to a consumer (whether orally or in writing) which may be construed as an admission of any liability on the part of Us. If it is accepted by Us that the cause of complaint is due to a defect or lack of quality in the Goods, then all negotiations and agreements relating to a compensation payment (if any) to be paid to the consumer shall be made by Us and We shall not be liable to pay to either You or the consumer any sum not negotiated or agreed by it.

**14. Pallet Control**

- 14.1 All pallets supplied by Us are the property of and must be returned promptly to Us. A one for one exchange should be made at the time of delivery. Where this is not possible the relevant paperwork must be completed in full and returned with the signed delivery note.

**1. YOUR CANCELLATION RIGHTS**

- 8.1 Prior to the Confirmation being sent to you any cancellation must be notified to us in writing. Once the Confirmation has been sent you may not cancel the Order without Our written consent. Acceptance of cancellation is in our sole discretion. We reserve the right upon consent being given to levy a charge to cover the costs associated with cancellation including (but not limited to) cost We incur to the manufacturer.

**2. OUR CANCELLATION RIGHTS**

- 2.1 We may have to cancel an Order before the Goods are delivered, for instance (but not limited to) due to an Event Outside Our Control or the unavailability of stock. We will promptly contact you if this happens.
- 2.2 If We have to cancel an Order under clause 13.1 and you have made any payment in advance for Goods that have not been delivered to you, We will refund these amounts to you.

**3. INFORMATION ABOUT US AND HOW TO CONTACT US**

- 3.1 Our registered office is at Low House Farm, Wharfe, Austwick LA2 8DQ and Our registered VAT number is 597929262.
- 3.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephone on 01200 449833 or by e-mailing Us at [sales@bowlander.co.uk](mailto:sales@bowlander.co.uk).
- 3.3 If you wish to contact Us in writing, or if any clause in these Terms requires you to give Us notice in writing (for example, to cancel the contract), you can send this to Us by e-mail, by hand, or by pre-paid post to the addresses stated in this clause 14. We will confirm receipt of this by contacting you in writing. If We have to contact you or give you notice in writing, We will do so by e-mail, by hand, or by pre-paid post to the address you provide to Us in the Order.

**4. HOW WE MAY USE YOUR PERSONAL INFORMATION**

- 4.1 We will use the personal information you provide to Us to:
- (a) provide the Goods;
  - (b) process your payment for such Goods; and

- (c) inform you about similar products or services that We provide, but you may stop receiving these at any time by notifying Us in accordance with clause 14.
- 4.2 We will not give your personal data to any other third party.
- 5. **OTHER IMPORTANT TERMS**
- 5.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.
- 5.2 For the purposes of the Contracts (Rights of Third Parties) Act 1999 these Terms are not intended to, and do not, give any person who is not a party to them any right to enforce any of their provisions.
- 5.3 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 5.4 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- 5.5 These Terms and the agreement for the supply of the Goods and any disputes or claims in connection with them are governed by English law. You and We both agree to submit to the exclusive jurisdiction of the English courts.

**OCTOBER 2020**