

FOOD MACHINERY 2000 LIMITED

TERMS AND CONDITIONS OF TRADE

In these conditions:

1. (a) "The Company" means Food Machinery 2000 Limited or such other Company as is nominated by them. Example; Food Machinery 2000 (Europe) Registration number 3566208.

(b) "The Customer" means the party to whom the machinery, equipment and services are provided.

(c) "The Goods" means the subject matter of the Contract including packaging, containers and pallets.

(d) "Rules" means the rule (if any) published by the Company from time to time setting out the terms of operation of the supply of the goods to which the conditions apply.

(e) "Contract" means an agreement between the Company and the Customer of which these terms and conditions shall form part.
2. (a) The goods are supplied by the Company only under these conditions which can be varied only in writing, signed by a Director or responsible Officer of the Company.

(b) These conditions shall be deemed to be incorporated in every Contract and any Conditions contained in the Customer's acceptance or confirmation which is inconsistent with these conditions and not specifically agreed to and acknowledged by the Company shall be deemed to be superseded and nullified by these conditions.
3. (a) All payments and charges must be made upon delivery unless otherwise agreed interest at 4% over the base lending rate of Barclays Bank Plc calculated on a daily basis shall be paid on all amounts outstanding unless otherwise specifically agreed by the Company in writing.

(b) Save as is otherwise agreed charges and prices do not include charge for delivery or storage for which the Customer is responsible.

(c) Save as may be otherwise agreed the Customer shall make payment to the Company of a deposit of at least 10% of the price in respect of the goods upon the order for the same.

- (d) Property in the goods shall remain with the Company until the goods are fully paid for and all other sums due from the Customer to the Company on any account have been paid. The Customer authorises the Company to enter upon such premises where the goods may lie to effect recovery (The Company making good all damage caused in exercise of such right). If any of the goods are incorporated in or used as material for any other goods before such payment or payments then the property in the whole of such other goods shall be and remain with the Company as aforesaid and all the Company's rights in respect of the goods shall extend to those other goods.
- (e) Any quotation upon which this order depends shall be valid for a period of 28 days from the date of the quotation subject to the equipment not being sold during such period.
- (f) All duties, taxes and impositions of any nature whatsoever payable in respect of manufacture, sale or delivery of the goods shall be paid by the Customer in addition to the price.
4. (a) The Company will not be liable to the Customer or to any other person for consequential or other loss, costs, expenses, or claims occasioned directly or indirectly by or in consequence of any loss, detention, delay, mis-delivery, damage, breakdown or deterioration of or to or in connection with the goods or arising from any accident or breakdown during loading, unloading or transport of the goods and whether or not caused or contributed to directly or indirectly by any act or omission, neglect, default or other wrong doing on the part of the Company, its servants or agents or any of them provided that this clause shall not exclude the Company's liability for death or personal injury resulting from its negligence.
- (b) The Company shall be relieved of its obligations hereunder to the extent that performance is prevented, frustrated, impeded or delayed directly or indirectly by, or in consequence of any default of the Customer, statute, regulation or order of any Government, council or other competent authority, riot, strike, lock-out, industrial dispute or other labour disturbance, storm, flood, fire, explosion or breakdown of machinery.
- (c) The Customer shall indemnify, and keep indemnified, the Company from and against all claims or damages or injury whether to persons or property caused by or in connection with or arising out of the use of the goods and all costs and charges in connection therewith.
5. (a) Any Statement with respect to the capacity, dimensions, description or other detail of the goods given by the Company in any quotation or communication or made verbally and not expressly stated in the Company's confirmation of order shall be

deemed to be for the guidance of the Customer only and shall not be considered or implied as a Condition or a Warranty governing amplifying or enlarging the Contract or be deemed to be an express or implied term thereof.

(b) All goods are bought in the condition in which they are at the date of Contract. The Customer has every right and opportunity to inspect and examine and test prior to making of any order prior to the giving of any order for the goods shall be deemed to have full knowledge of the state and condition of the goods whether or not such opportunity for the examination, inspection and test taken. The goods are bought as seen and accepted unless otherwise stated.

(c) The goods are sold as second-hand unless expressly otherwise provided. Manuals and instruction books are not normally available with goods but may perhaps be obtained upon request from the manufacturer.

(d) The Company shall not be liable for any expenses incurred by the Customer in attempting to repair, replace or modify an alleged defective item.

6. (a) It is agreed that the Customer has not relied upon any warranty given by the Company or any servant or agent of the Company and has not relied upon any description given by the Company or any servant or agent of the Company whether oral or written. The Customer further agrees that the statutory warranties and conditions expressed or implied as to the goods being fit for the purpose for which they are to be used and of merchantable quality whether contained in Section 14 of the Sale of Goods Act 1979 or otherwise expressed or implied are specifically excluded from this Contract. The Customer warrants that it is in business in dealing with or utilising the goods and has equal or superior knowledge to the Company in respect of the goods.

(b) It is agreed that the Company has no special knowledge of the Customer's operation or requirements and the Customer agrees that the Machinery is purchased because of the independent determination by the Customer of its suitability for intended use.

(c) Sections 910 and 11 of the Supply of Goods (implied terms) Act 1973 are hereby expressly excluded from the Terms and Conditions of this Contract.

(d) Warranty if given will only cover Mechanical parts, no Software or Electrical parts or Labour to fit will ever be covered.

7. (a) Goods are carried subject to the RHA Conditions of Carriage 1967 (amended 1971) or CMR conditions whichever is applicable. Copies of these conditions are available on application. Insurance if required must be effected by the Customer.

- (b) The delivery or completion date specified in the Contract is approximate only and unless otherwise expressly stated time is not of the essence of the Contract.
- (c) All claims in respect of loss or damage or of any other sort whatsoever shall be notified to the Company in writing within 7 days after delivery of Goods to the Customer or its authorised agent or damage after such loss or damage shall have come to the knowledge of the Customer whichever shall be the sooner and any claims not so notified within such time shall be deemed to be waived.
8. (a) The Company will use all reasonable endeavours to deliver the goods by the date, or dates, agreed between the parties but the Customer shall not be entitled to refuse delivery on account of any delays.
- (b) In the event of the Company being unable to supply goods of the description purchased the Company reserves the right to vary the goods and supply goods of similar nature and value. Delivery or part of any other shall be accepted by the Customer proper abatement being made in respect of the price.
- (c) In the event of the goods or any part thereof failing to reach its destination the Customer must inform the Company in writing of such non-delivery within such time as will enable a claim to be made against the Carrier. The Company will not otherwise consider any claim in respect of non-delivery of the goods. In the event of there being any discrepancy or shortage the Company will not entertain any claims unless notice in writing of such discrepancy or shortage is received by the Company within 3 days of the day of receipt.
- (d) No guarantee whatsoever is supplied for the state and condition of the goods after delivery. The Customer shall be responsible for any maintenance and service contracts and the like.
9. (a) The use of all guards, interlocks, visual and audible warnings, electrical devices and other safety devices on the goods and the operation of the goods in accordance with its appropriate operation is essential to the safe use of the goods and the Customer agrees that it will install and place upon the machine in legible condition all warnings or operating instructions necessary for its safe use in accordance with the requirements of the manufacturer or any other competent authority and that it will not remove or render inoperable any guards, interlocks, electrical devices or other safety devices which are part of the goods and will repair and replace any as may require such and that it will not add any device that will render the machine unsafe and that it will operate the goods in accordance with the manufacturer's instructions.

- (b) It is the responsibility of the Customer to ensure that the Customer and those operating the goods know how to operate the goods (of whatsoever description the same may be) safely.
- (c) The Customer is responsible for obtaining any approvals required from the local factory inspector with regard to the operation, guarding and safety of the goods.
- (d) The Customer shall be responsible for the installation and commissioning of the goods and compliance with the safety requirements of their installation, operation and use to the standards imposed by law, custom and statute.
- (e) The Customer hereby undertakes so far as is reasonably practicable that the goods will be safe and without risk to health when properly used and the giving of the order which shall be in writing in accordance with these Terms shall be deemed to be the acceptance of such undertaking by the Customer. The Customer warrants that it will carry out the erection and installation of the goods in such manner that nothing about the way in which it is erected or installed shall make it unsafe or a risk to health when properly used. The Customer warrants that the goods will be properly used and that it and its employees, servants and agents will be properly instructed in the safe operation of the goods and that prior to such operation and thereafter from time to time at reasonable intervals it will carry out or arrange for the carrying out of such testing and examination as may be necessary to ensure that the goods are so installed and used as to be safe and without risk to health and in particular will take such steps as are necessary to secure that there will be available in connection with the use of the goods adequate information about the use for which it is designed and has been tested and about any conditions necessary to ensure that when put to that use it will be safe and without risks to health. The Customer shall indemnify and hold harmless the Company, its employees, agents and subcontractors against all claims and losses and all costs and expenses reasonably incurred in relation thereto or occasioned by breach of this condition. The Customer further warrants that it has effected insurance in respect of indemnities on its own part herein provided for and will upon request transfer the benefit of such insurance to the Company.
- (f) The Customer agrees to pay on behalf of the Company all sums which the Company becomes legally obliged to pay because of bodily injury or property damage caused by or resulting from the use or misuse of the goods including legal costs and expenses and to indemnify and hold the Company harmless from all actions, claims and demands by any person, firm or corporation arising out of, or in any way connected with the goods, their operation, use or misuse or the design, construction or composition of any goods including all claims, actions and demands based in whole or in part of the default or negligence of the Company.

10. (a) The law governing this Contract shall be the Law of England and Wales.
- (b) Any dispute hereunder (save in relation to payment of sums due) shall be referred to a single arbitrator to be agreed upon by the parties or in default of such agreement shall be nominated by the President for the time being of the Institute of Arbitrators in accordance with the provisions of the Arbitration Act 1979 or any statutory re-enactment for the time being in force.
- (c) All notices given by the Company to the Customer hereunder shall be deemed to be duly given if posted by prepaid letter to the last known address of the Customer and such notice shall be deemed to have been received by the Customer 3 clear working days after the posting. The Company may in its discretion give such notice by recorded delivery post.