

Conditions & Terms of Sale

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1. Definitions

- 1.1 'Buyer' means the person who buys or agrees to buy the goods from the Seller.
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 'Delivery Date' means the date as agreed between the Seller and Buyer when the goods are to be delivered.
- 1.4 'Goods' means the articles which the Buyer agrees to buy from the Seller.
- 1.5 'Price' means the price for the Goods including carriage, packing and insurance but excluding VAT.
- 1.6 'Seller' means Kirbys Produce of New Covent Garden Market, Nine Elms Lane, London, SW8 5JB

2. Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 Upon cessation of regular orders for the delivery of goods shall be deemed as a breach in the agreed trading relationship and all monies owed shall become payable in full with all outstanding debt to be paid in full.

3. The Price and payment

- 3.1 The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 The Seller shall provide the Buyer with a monthly statement detailing all invoices for the month.
- 3.3 Payment of the Price and VAT shall be due within 14 days of the date of issue of the monthly statement. Time for payment shall be of the essence.
- 3.4 The Seller reserves the right to require a deposit from the Buyer and to require payment for the Goods; before delivery.
- 3.5 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the following rates:
 - 3.5.1 a rate of 12% the first three months;
 - 3.5.2 a rate of 25% thereafter and shall accrue at such a rate after as well as before any judgment
- 3.6 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
 - 3.6.1 Suspend or cancel deliveries of any articles due to the Buyer; and/or
 - 3.6.2 Appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.
- 3.7 In the event that the Buyer fails to make payment for the Goods the Buyer shall fully indemnify the Seller in respect of any costs and expenses legal or otherwise, incurred by the Seller in recovering payment from the Buyer.

4. The Goods

- 4.1 All terms, conditions and warranties (whether implied or made expressly) whether by the Seller or its servants or agents or otherwise (other than those express warranties set out in these conditions of sale) relating to the quality and/or fitness for purpose of the Goods or any of the Goods are excluded.

5. Delivery

- 5.1 The Goods shall be delivered to the Buyer at the Seller's address. The risk in the Goods shall pass to the Buyer upon such delivery taking place.
- 5.2 The Seller shall arrange for carriage of the Goods to the Buyer's address provided that the Seller shall not have to arrange carriage of the Goods to a location more than miles from the Seller's address. In which case the costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer without any set-off or other withholding whatever and shall be due on the date for payment of the Price.
- 5.3 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5.4 The Seller operates a policy of next day delivery. Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 1 week of the Delivery Date.

- 5.5 Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.

6. Acceptance of the Goods

- 6.1 If the Buyer properly rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full Price for such Goods unless the Buyer gives notice of rejection to the Seller within 12 hours of the time of delivery and at the Buyer's cost returns such Goods to the Seller within 24 hours of delivery.

7. Title and risk

- 7.1 The Goods shall be at the Buyer's risk as from delivery.
- 7.2 In spite of delivery having been made, property in the Goods shall not pass from the Seller until:
 - 7.2.1 The Buyer shall have paid the Price plus VAT in full; and
 - 7.2.2 No other sums whatever shall be due from the Buyer to the Seller.
- 7.3 Until property in the Goods passes to the Buyer in accordance with clause 7.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property. The Buyer shall store the Goods in a way that retards their deterioration. The Buyer shall refrigerate the goods if appropriate.
- 7.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 7.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 7.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 7.4 shall cease.
- 7.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

8. Remedies of Buyer

- 8.1 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.
- 8.2 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

9. Proper law of contract

- 9.1 This contract is subject to the law of England and Wales.
- 9.2 The parties submit to the exclusive jurisdiction of the courts of England and Wales and irrevocably agree that proceedings issued out of the said courts may without prejudice to the rules of service of such courts be served on them by delivering such proceedings in an envelope addressed to the party to be served at the address for such party set out in this contract.

Signed _____

Print name _____

Position _____

Date _____