

## Terms & Conditions

We strongly advise you to read all the terms and conditions below. If your request to open an account with M J Baker is accepted you will be legally bound by these terms and conditions.

**YOUR ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 9.4 WHICH LIMITS OUR LIABILITY TO YOU IN PRESCRIBED CIRCUMSTANCES AND CONDITION 2.6 (PERSONAL GUARANTEE) WHICH ENTITLES M J BAKER TO PURSUE THE PRINCIPAL TO THIS AGREEMENT FOR NON PAYMENT OF ANY DEBT OR NON FULFILMENT OF AN OBLIGATION.**

### 1. INTERPRETATION

1.1 In these terms and conditions ("Conditions") the following words have the following meanings:

"Customer" means any person who offers to purchase the Goods from M J Baker pursuant to these conditions;

"Contract for Supply" means any agreement between M J Baker and the Customer for the supply of Goods incorporating these Conditions;

"Delivery Point" means the place where delivery of the Goods takes place under condition 5;

"Goods" means any goods agreed in an Order to be supplied to the Customer by M J Baker (including any part or parts of them);

"M J Baker" means M J Baker Foodservice Limited (No. 03672718);

"Order" means any order (whether made in writing, by telephone or electronically) by the Customer for the purchase of

Goods; "person" any person, body corporate, association or groups of persons whatsoever.

1.2 In these Conditions references to any statute will be construed as a reference to that statute as from time to time amended, consolidated or replaced.

References to the singular include the plural and vice versa. Headings will not affect construction.

### 2. APPLICATION OF TERMS

2.1 Each Order will be subject to these Conditions to the exclusion of all other terms and conditions.

2.2 Each Order shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions, and in placing an Order the Customer agrees to be bound by these Conditions.

2.3 No order shall be deemed to be accepted by M J Baker until M J Baker delivers the Goods to the Customer.

2.4 The Customer must ensure that the details of its Order are complete and accurate.

2.5 These Conditions apply to all M J Baker's sales and no terms or conditions contained in any other document so far as they are inconsistent with these

Conditions will form part of the Contract for Supply or of any Order.

2.6 By placing an Order, the Customer confirms that they are over 18 years of age, has the capacity and authority to enter in this agreement with M J Baker.

2.7 By entering into this agreement and by placing an Order with M J Baker, you as Principal to this agreement are personally liable for non-payment of any debt or non fulfilment of any obligation of the Customer (as Personal Guarantor), and M J Baker reserves the right to take first recourse against you, unless otherwise agreed.

### 3. PRICE

3.1 Unless otherwise agreed by M J Baker in writing the price for the Goods shall be the price set out in M J Baker's price list published on the date of delivery or deemed delivery. M J Baker reserves the right to make reasonable alterations to the price for the Goods in the event of unforeseeable market fluctuations or printing errors in the price list.

3.2 The price for the Goods shall be exclusive of any value added tax.

### 4. PAYMENT

4.1 The price for the Goods under each Order must be paid to M J Baker by the Customer on or before the 16th day of the month following the month in which the Goods are delivered or deemed to be delivered to the Customer

4.2 Time for payment shall be of the essence.

4.3 No payment shall be deemed to have been received until M J Baker has received cleared funds. Cheques returned by the bank marked "Refer to drawer" or "Refer to drawer please represent" may be subject to charges of £20 and £10 respectively to cover the bank charge.

4.4 All payments payable to M J Baker under any Order shall become due immediately upon termination of the Contract for Supply despite any other provision.

4.5 If the Customer fails to pay M J Baker any sum due the Customer will be liable to pay interest to M J Baker on such sum from the due date for payment at the statutory annual interest rate of 8% above the Bank of England reference rate in force on the day the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid accruing on a daily basis until payment is made, whether before or after any judgment. In addition M J Baker will claim reasonable compensation as stipulated by the Late Payment of Commercial Debts (Interest) Act 1998. M J Baker may also, at its discretion, withhold or refuse to accept any future order until the overdue account is paid.

4.6 M J Baker may open a credit account on receipt from the Customer of satisfactory references. If the Customer is unable to provide references satisfactory to M J Baker, the Contract for Supply will be dealt with on a strictly Cash on Deliver (C.O.D) basis for a trial period of six months or such other period as M J Baker may determine.

4.7 M J Baker reserves the right to pass on any charges, fees and costs incurred by M J Baker and its agents on behalf of M J Baker in pursuit of the collection of monies due from the Customer (or its Personal Guarantor) on to the Customer (or its Personal Guarantor) in addition to that outstanding debt. These additional monies are subject to the same payment terms as payment for the Goods.

### 5. DELIVERY

5.1 Time for Last Orders. Orders must be received by M J Baker's Sales Office by 4pm during a working day for scheduled delivery on the following working day. Please note that our telesales manager may listen to your call, to assist with ongoing training and development of our staff with the aim of giving you the best possible service.

5.2 Unless otherwise agreed in writing by M J Baker, delivery of the Goods shall take place at the Customer's place of business.

5.3 Delivery costs are included in the price quoted by M J Baker for the Goods.

5.4 Any dates specified by M J Baker for delivery of the Goods are intended to be estimates and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

5.5 If for any reason the Customer will not accept delivery of any of the Goods when they are delivered, or M J Baker is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, licenses or authorisations:

5.5.1 risk in the Goods will pass to the Customer (including for loss or damage caused by M J Baker's negligence);

5.5.2 the Goods will be deemed to have been delivered; and

5.5.3 M J Baker may store the Goods until delivery where upon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

5.6 The Customer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Goods. Roll cages and pallets remain the property of M J Baker at all times. M J Baker reserves the right to charge the Customer for any items left at the premises which are not returned on demand or are lost by the Customer.

5.7 The quantity of Goods must be checked by the Customer in the presence of the driver on delivery, and the Customer should deal with any claims for shortfall in the quantity of Goods with the driver. In any event, M J Baker will only consider claims for shortfall in the quantity of Goods delivered if such shortfall is notified by the Customer within 24 hours of delivery. Such notification may be by telephone.

### 6. NON-DELIVERY

6.1 The quantity of any consignment of Goods as recorded by M J Baker on dispatch from M J Baker's place of business shall (in the absence of manifest error) be conclusive evidence of the quantity received by the Customer on delivery.

6.2 Any liability of M J Baker for non-delivery of the Goods shall be limited to delivering or re-delivering the relevant Goods within a reasonable time or issuing a credit note at the pro rata Order rate against any invoice raised for such Goods.

### 7. RISK AND TITLE

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

7.1.1 in the case of Goods to be delivered at M J Baker's premises, at the time when M J Baker notifies the Customer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at M J Baker's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when M J Baker has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until M J Baker has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by M J Baker to the Customer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as M J Baker's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as M J Baker's property, but the Customer may 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 Customer (and provided the Goods are still in existence and have not been resold), M J Baker may at any time require the Customer to deliver up the Goods to M J Baker and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7.5 M J Baker shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from M J Baker.

### 8. QUALITY

8.1 M J Baker warrants that (subject to the other provisions of these Conditions) upon delivery the Goods will:

8.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1994;

8.1.2 where the Goods are food intended for human consumption, up to and including the "Best By" or "Best Before" date as marked on the Goods by the Manufacturer, comply with legislation relating to supply of food and food safety in force at the time of delivery. The Customer is advised to check this, in the presence of the driver, at the time of delivery.

8.2 M J Baker shall not be liable for a breach of any of the warranties in condition 8.1 unless:

8.2.1 the Customer gives written notice of the defect or damage to M J Baker's Sales Office within 3 days of the time when the Customer discovers or ought to have discovered the defect; and

8.2.2 M J Baker is given a reasonable opportunity, after receiving the notice, of examining such Goods and the Customer returns such Goods to M J Baker's place of business at M J Baker's expense for the examination to take place there.

8.3 M J Baker will not be liable for a breach of any of the warranties in condition 8.1 if:

8.3.1 the Customer makes any further use of or deals with such Goods after giving such notice; or

8.3.2 the defect arises because of the Customer's failure in relation to the appropriate storage.

8.4 Subject to conditions 8.2 and 8.3, if any of the Goods do not conform with any of the warranties in condition 8.1 M J Baker shall at its option replace such Goods or refund the price of such Goods at the pro rata Order rate provided that, if M J Baker so requests, the Customer shall, at M J Baker's expense, return the Goods to M J Baker.

8.5 If M J Baker complies with condition 8.4 it shall have no further liability for a breach of any of the warranties in condition 8.1 in respect of such Goods.

8.6 Application by the Customer to return Goods to M J Baker for any reason other than defect or damage, must be made by notice in writing to M J Baker's Sales Office, within 3 days of delivery.

8.7 Splitting Cases. M J Baker is unable to split Goods whose product pack sizes are preceded with the figure 1 in M J Baker's price list.

Otherwise, M J Baker is prepared to split cases of Goods where the Manufacturer's Outer allows.

### 9. MANDATORY FOOD INFORMATION

9.1 M J Baker is not responsible for providing any food information in relation to the products the Customer purchases from M J Baker.

9.2 M J Baker is not responsible for ensuring the food information on the products the Customer purchases from M J Baker is accurate and/or compliant with any relevant legislation or regulations.

9.3 It is the Customer's responsibility to verify with the producer of the product:

9.3.1 the accuracy of the food information on the products the Customer purchases from M J Baker; and/or

9.3.2 the compliance of such food information with any relevant legislation or regulations.

9.4 The Customer agrees to indemnify and keep indemnified M J Baker in full and on demand from and against all and any losses, costs and expenses suffered or incurred by M J Baker arising out of, or in connection with, any failure of the Customer to comply with any relevant legislation or regulations in relation to food information.

### 10. LIMITATION OF LIABILITY

10.1 Subject to condition 8, the following provisions set out the entire financial liability of M J Baker (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

10.1.1 any breach of these Conditions; and

10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract for Supply or any Order.

10.2 All warranties, conditions and other terms implied by statute or common law are excluded, to the fullest extent permitted by law.

10.3 Nothing in these Conditions excludes or limits the liability of M J Baker for death or personal injury caused by M J Baker's negligence or fraudulent misrepresentation.

10.4 Subject to conditions 9.2 and 9.3:

10.4.1 M J Baker'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 for Supply or any Order shall be limited to 150% of the price of the Goods in respect of which the Customer suffered or incurred the loss or damage; and

10.4.2 M J Baker shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract for Supply.

### 11. ASSIGNMENT

11.1 The Customer shall not be entitled to assign the benefit of the Contract for Supply or any Order or any part of it without the prior written consent of M J Baker.

11.2 M J Baker may assign the Contract for Supply or any Order or any part of it to any person.

### 12. TERMINATION

12.1 Subject to fulfilment of any outstanding Order, M J Baker reserves the right to terminate the Contract for Supply and any account at any time whereupon all sums due under the Contract for Supply and any Order shall be immediately due and payable.

12.2 M J Baker may terminate the Contract for Supply and any Order immediately by notice in writing in the event that:

12.2.1 the Customer has a bankruptcy order made against him or makes an arrangement with his creditors, or (being a body corporate) a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or the appointment of a receiver or administrative receiver over the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

12.2.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract for Supply or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

### 13. FORCE MAJEURE

M J Baker reserves the right to defer the date of delivery or to cancel any Order or reduce the volume of Goods in any Order (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of M J Baker including, without limitation, acts of God, governmental actions, war or 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), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

### 14. GENERAL

14.1 Each right or remedy of M J Baker shall be without prejudice to any other right or remedy which M J Baker may have.

14.2 If any provision of these Conditions 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 these Conditions and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by M J Baker in enforcing or partially enforcing any provision of these Conditions will not be construed as a waiver of any of its rights.

14.4 Any waiver by M J Baker of any breach of, or any default under, any provision of these Conditions by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Conditions.

14.5 The parties do not intend that any rights in relation to any Contract for Supply or any Order will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to them.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract for Supply shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

### 15. COMMUNICATIONS

15.1 Except where specifically indicated otherwise in these Conditions, all communications between the parties about these Conditions must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

15.1.1 (in case of communications to M J Baker) to its registered office or such changed address as shall be notified to the Customer by M J Baker; or

15.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or such other address as shall be notified to M J Baker by the Customer.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

15.2.2 if delivered by hand, on the day of delivery;

15.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

15.3 Except where specifically indicated otherwise in these Conditions, Communications addressed to M J Baker shall be marked for the attention of "Mr. Malcolm Baker, Managing Director".