



J. MARR

BUYING TERMS AND CONDITIONS OF TRADING 10TH DECEMBER 2010**1. Interpretation**

(i) In these conditions:

- “Buyer” means J. Marr (Seafoods) Limited and/or J. Marr (Commodities) Limited (as stipulated in the Contract) both of Livingstone Road, Hessle, East Yorkshire and all subsidiary and/or associated Companies operating within the Marr group of companies.
- “Contract” means the contract between Seller and Buyer for the purchase and sale of the Goods incorporating these conditions.
- “Goods” means the goods (including any instalment of the goods or any parts for them) which Seller is to supply in accordance with these conditions.
- “Sanctioned Activity” means any activity or service subject to sanctions imposed by a Sanctioning Authority.
- “Sanctioning Authority” means the United Nations, European Union, United Kingdom, United States of America or any other applicable competent authority or government.
- “Sanctioned Party” means any persons, entities, bodies, or vessels designated by a Sanctioning Authority.
- “Seller” means the person, firm or company who accepts Buyer’s offer for the purchase of the Goods or whose order for the Goods is accepted by Seller. Where Buyer contracts on behalf of any other party including (but limited to) as agent, shipper, holder, consignee, freight forwarder, receiver of the Goods or person entitled to possession of the Goods then the term “Seller” shall include such other party.
- “Working day” means a day (other than a Saturday, Sunday or public holiday) when the banks in London are open for business.

2. Basis of the Sale

- (i) Seller shall sell and Buyer shall purchase the Goods in accordance with any written quotation of Seller which is accepted by Buyer (including acceptance by email), or any order of Buyer which is accepted by Seller (including acceptance by email), subject in either case to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by Buyer.
- (ii) No terms or conditions endorsed upon, delivered with or contained in Seller’s quotation, acknowledgement or acceptance of order or similar document shall form part of the Contract and Seller waives any right which it otherwise might have to rely on such terms and conditions. Use by Buyer in relation to any order of Seller’s reference number for that order shall not be or be deemed to be acceptance by Buyer of any terms and conditions of Seller subject to which that order was made or purported to be made.
- (iii) No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of Buyer and Seller.
- (v) Buyer shall provide Seller with applicable specifications for the Goods.

3. Price

- (i) The price of the goods shall be as agreed between Buyer and Seller as confirmed by Buyer’s purchase order (including email confirmation).
- (ii) Prices quoted by Seller are quoted on the basis specified in the Contract, namely, collection by Buyer from Seller’s premises, Free on Truck (FOT), Free on Board (FOB), Free on Board Stowed (FOBS), Cost and Freight (C&F), Free Alongside Ship (FAS), Free Carrier (FCA) or Cost Insurance and Freight (CIF)

4. Terms of Payment

- (i) Subject to any special terms agreed in writing between Buyer and Seller, Buyer shall pay for the Goods within 5 working days of:
- (a) in the case of CIF or C&F purchases, delivery to Buyer of the original bill of lading for the goods and any other documents as required by Buyer;
- (b) in the case of FOB purchases, delivery to Buyer of a copy invoice and mates receipt duly stamped and duly signed by the master of the vessel and the carrier;
- and time for payment in any case shall not be of the essence of the Contract.
- (ii) Without prejudice to any other right or remedy Buyer shall be entitled to set off against any amount payable by Buyer to Seller under the Contract any amount owing at any time from Seller to Buyer or the value of any claim Buyer may have against Seller including but not limited to sums due under any loan(s) advanced by Buyer to Seller.

5. Delivery

- (i) The goods shall be delivered in accordance with the purchase order terms (or as otherwise confirmed to Seller in writing (including email confirmation)) and time for delivery shall be of the essence.
- (ii) If the Goods are not delivered on the due date then without prejudice to any other rights which it may have Buyer reserves the right to:
- (a) refuse to accept any subsequent delivery of the Goods which Seller attempts to make;
- (b) recover from Seller any expenditure reasonably incurred by Buyer in obtaining the Goods in substitution from another supplier; and
- (c) claim damages for any additional costs, loss or expenses incurred by Buyer which are in any way attributable to Seller’s failure to deliver the Goods on the due date.
- (iii) Where Buyer agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by Seller to deliver any one instalment shall entitle Buyer at its option to treat the whole Contract as repudiated.
- (iv) Until the Goods are accepted by Buyer, Buyer reserves its rights under clause 7(iii) below.

6. Risk and Property

- (i) Risk of damage to or loss of the goods shall pass to Buyer at the time of delivery. In the case of export sales, risk will pass to Buyer in accordance with Incoterms.
- (ii) Property in the Goods shall pass to Buyer on delivery to Buyer unless the parties agree otherwise.

7. Warranty and Liability

- (i) Seller warrants to Buyer that the Goods:
- (a) Will be supplied packed in export quality cartons at a suitable temperature.
- (b) At the time of delivery will correspond with their specification and will comply with the Sale of Goods Act 1979 and all applicable statutory requirements in any part of the world.
- (c) That Seller has good title to the Goods free from all liens, charges and encumbrances and has the right to sell the Goods.
- (ii) Buyer shall have the right to inspect and test the Goods at any time prior to delivery and notwithstanding any such inspection or testing, Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect Seller’s obligations under the Contract.
- (iii) Without prejudice to any other rights Buyer may have, if any of the Goods are not supplied in accordance with, or Seller fails to comply with, any of the terms of the Contract, Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by Buyer:
- (a) to rescind the order;
- (b) to reject the Goods (in whole or in part) and return them to Seller at the risk and cost of Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by Seller;
- (c) at Buyer’s option to give Seller the opportunity at Seller’s expense either to remedy any defect in the Goods or to supply replacement Goods;
- (d) to refuse to accept any further deliveries of the Goods but without any liability to Seller;
- (e) to claim such damages as may have been sustained in consequence of Seller’s breach or breaches of the Contract.
- (iv) Where Buyer deals as a consumer (within the meaning of the Unfair Contract Terms Act 1977) the statutory rights of Buyer are not affected by these conditions.

8. Sanctions

- (a) Seller warrants that at the date of the Purchase Confirmation and throughout its duration they and any affiliate or connected entity including individuals employed by the Seller or connected to them are not a Sanctioned Party.
- (b) If at any time Seller is in breach of subclause (a) above then Buyer may terminate and/or claim damages resulting from the breach.
- (c) If the transaction involves a Sanctioned Party or a Sanctioned Activity, without prejudice to any other rights that may be available in subclause (b) above:
- (i) if loading has not commenced, Buyer may cancel the transaction; or
- (ii) if the voyage or the loading has commenced, Buyer may refuse to proceed and discharge any cargo already loaded at any safe port or place of their choice (including the port or place of loading);
- (d) Seller shall indemnify Buyer against any and all claims brought against the Buyer by any carrier or holders of bills of lading, waybills or other documents by reason of Seller’s breach of this clause.
- (e) Without prejudice to the foregoing Seller shall indemnify Buyer in relation to any losses, expenses, liabilities, demands, penalties including legal and other professional fees, incurred or suffered by Buyer in connection with the Seller’s breach of this clause.
- (f) Seller shall provide Buyer within 3 working days or being requested to do so, the names, addresses, dates of birth and, if necessary copy passports of any individuals who own shares in the Seller or are beneficial owners of the Seller and any employees or associates of the Seller who may have a financial interest in the Seller or who may benefit from the transaction evidenced by the Purchase Confirmation.

9. Insolvency of Seller and Termination

- (i) Without prejudice to any other right or remedy available to Buyer, Buyer shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to Seller if:
- (a) Seller is in receipt of a statutory demand under the Insolvency Act 1986 or makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (b) An encumbrance takes possession, or a receiver is appointed, of any of the property or assets of Seller; or
- (c) Seller ceases, or threatens to cease, to carry on business; or
- (d) the financial position of Seller deteriorates to such an extent that in the opinion of Buyer the capability of Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- (e) Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to Seller.
- (ii) The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Buyer the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

10. Indemnity

Seller shall make Buyer indemnified in full against all direct, indirect or consequential liabilities (all those which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Buyer as a result of or in connection with any claim made against Buyer in respect of any liability, loss, damage, injury, or cost sustained by Buyer’s employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury or cost was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by Seller.

11. Export Terms

- (i) In these conditions “Incoterms” means international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, the latter shall prevail.
- (ii) Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for payment of any duties thereon should that be the liability of Buyer.
- (iii) Payment of all amounts due to Seller shall be made by either
- (a) irrevocable letter of credit or
- (b) bank telegraphic transfer or
- (c) in such manner as agreed by Buyer.

12. Force Majeure

- (i) A party provided that it has complied with the provisions of Clause 12(ii) shall not be in breach of the Contract nor liable for any failure or delay in performance of any obligations under the Contract arising from or attributable to acts events omissions or accidents beyond its reasonable control including but not limited to any of the following:
- (a) Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) compliance with any law;
- (f) fire, explosion or accidental damage; (g) loss at sea;
- (h) closure of a market or an importation ban; and
- (j) collapse of building structures.
- (ii) Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance.

13. General

- (i) The relationship between the parties shall be that of Buyer and Seller, and nothing in the Contract shall create or be deemed to create a partnership between the parties or make Buyer the agent of Seller for any purpose other than that of fiduciary agent of Seller for the receipt and payment of monies in accordance with Clause 6.
- (ii) Seller shall not be entitled to assign the Contract or any part of it without the prior written consent of Buyer and Buyer shall be entitled to assign the Contract or any part of it without the prior written consent of Seller and Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (iii) 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 registered office or principal place of business or such other address as at the relevant time have been notified pursuant to this provision to the party giving the notice.
- (iv) Failure or delay by Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract and no waiver by Buyer of any breach of the Contract by Sellers shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (v) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.
- (vi) Buyer and Seller do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it
- (vii) Law and jurisdiction
- (a) Law of application
- Except as specifically provided elsewhere herein, English law shall apply to the terms and conditions hereof and English law shall also be applied in interpreting the terms and conditions hereof.
- (b) Jurisdiction
- All actions against Seller under the Contract shall be brought before the High Court in England and no other Court shall have jurisdiction with regards to any such action.

Nothing in these terms and conditions shall affect or prejudice the right of Buyer to take action in accordance with the law of any country or state to bring a claim or enforce a lien or to obtain security by seizure, attachment or arrest of assets for any amounts payable to Seller under the Contract.

- (viii) Seller shall keep in strictest confidence all technical know-how and the nature and terms of any transaction (commercial or otherwise) between Seller and Buyer which have been disclosed to Seller by Buyer or its agent or any other confidential information concerning Buyer’s business.
- (ix) This Agreement supersedes and has precedence over all previous Sale Terms and Condition Agreements, including verbal discussions and all exchange of correspondence related thereto, whether by telex, fax, letter or any other means of communication, between the Parties and/or any of their affiliates or parent company, past or present, in connection with the same object.

For the avoidance of doubt, where there is a conflict or inconsistency between the terms of a collateral loan agreement entered into between the parties, the terms of the loan agreement shall prevail over this Agreement



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