

SMITH SAGAR LTD

TERMS OF TRADING FOR GOODS

All orders accepted in respect of any fish, seafood or related products ("Goods") will be on these Terms to the exclusion of all other terms and conditions, unless otherwise agreed in writing. By placing an order with us, you are expressly waiving any printed terms you may have. An order shall only be deemed to be accepted when we issue a printed/written acceptance of the order ("Sales Invoice") at which point the contract shall come into existence.

1 Price and Weight

1.1 A quotation for the Goods shall not constitute an offer. A quotation shall only be valid for the period of time (if any) specified therein and may be withdrawn by us at any time.
1.2 Unless otherwise stated on the price list:
1.2.1 The price quoted is an illustrative estimate only and the price charged will be our price current at the time of delivery. We may adjust the price at any time before delivery to reflect any increase in our costs of supplying the Goods.
1.2.2 The price quoted excludes any taxes or duties. Any taxes or duties that may be appropriate will be charged at the rate applying at the time of delivery.
1.2.4 Weights quoted are an illustrative estimate only.

2 Delivery

2.1 If you accept delivery of the Goods after the estimated delivery time it will be on the basis that you have no claim against us for any delay (including direct, indirect or consequential loss, loss of profits, or increase in the price of the Goods).
2.2 We may deliver the Goods in instalments. Each instalment is treated as a separate contract.
2.3 The Customer shall provide, at its expense, the labour/equipment necessary for unloading the Goods.
2.4 Proof of delivery notes will only be issued by prior arrangement.

3 Delivery and safety

3.1 We may decline to deliver if:
3.1.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or
3.1.2 the premises (or access to them) are unsuitable for our vehicles.

4 Payment Terms

4.1 You are to pay us in cash on delivery, unless you have an approved credit account.
4.2 If you have an approved credit account, payment is due by seven days after the date of the invoice unless otherwise agreed in writing.
4.3 All payments due to us must be made in full without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
4.4 Time of payment is of the essence. If you fail to pay us in full on the due date:
4.4.1 we may suspend or cancel future deliveries;
4.4.2 we may cancel any discount offered to you; and
4.4.3 you must pay us interest at the rate set for the purposes of s6 of the Late Payment of Commercial Debts (Interest) Act 1998: a. calculated (on a daily basis) from the date of our invoice until payment; b. compounded on the first day of each calendar month; and c. before and after any judgement.
4.5 If you have an approved credit account, we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may do any of those at any time without notice.
4.6 While you owe money to us, we have a lien on any items of your property in our possession.
4.7 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including legal costs) following any breach by you of any of your obligations under these Terms.
4.8 You should notify us in writing of any change to your company name/status or contact details.

5 Title

5.1 Ownership of the Goods does not pass to you until we have received in full all sums due from you in respect of (i) such Goods; and (ii) any other account.
5.2 Until ownership of the Goods has passed to you, you shall:
5.2.1 hold the Goods on a fiduciary basis as our bailee;
5.2.2 store the Goods (at no cost to us) separately from all other goods in such a way as they remain identifiable as our property;
5.2.3 not destroy, deface or obscure any identifying mark on packaging on or relating to the Goods; and
5.2.4 maintain the Goods in satisfactory condition and keep it insured on our behalf for its full price against all risks.
5.3 You may resell the Goods before ownership has passed to you only on the following conditions:
5.3.1 any sale shall be effected in your ordinary course of business at full market value; and
5.3.2 any sale shall be the sale of our property on your own behalf and you shall deal as principal when making the sale.
5.4 Your right to possession of the Goods will terminate immediately if any of the events in clause 11.2 occur.
5.5 We are entitled to recover payment for the Goods notwithstanding that ownership has not passed to you.

5.6 You grant us, our agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or to recover them.

5.7 This clause 5 shall survive any termination or cancellation of a contract under these Terms.

6 Risk

6.1 The Goods are at your risk from the time of delivery.
6.2 Delivery takes place either:
6.2.1 at our premises (if you are collecting Goods or arranging carriage); or
6.2.2 at your premises (if we arrange carriage using our vehicles); or
6.2.3 when we deliver the Goods to the carrier (if we are arranging carriage and not using our vehicles), as agreed between us.
6.3 If you fail to accept delivery of the Goods, the Goods shall be deemed to be delivered at such time as we notify you they are ready.
6.4 You must inspect the Goods on delivery or as soon as possible after delivery. If the Goods are not of satisfactory quality/quantity (or not delivered), you must inform us within 4 hours of delivery (or the expected delivery time). You must give us (and any carrier) a fair chance to inspect such Goods.

7 Warranties

7.1 Subject to clauses 1 and 2, we warrant that the Goods:
7.1.1 comply with their description on our Sales Invoice; and
7.1.2 are free from material defect at the time of delivery (as long as you comply with clause 6.4).
7.2 To the maximum extent permitted by law, we give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) in relation to any Goods provided under these Terms.
7.3 We shall not be liable for the Goods' failure to comply with the warranty set out in clause 7.1 if you make any use of the Goods.
7.4 If you believe that we have delivered Goods which are defective in the expected quality or quantity you must:
7.4.1 inform us (in writing), with full details, within 4 hours of delivery; and
7.4.2 allow us to investigate (we may need access to your premises and the Goods).
7.5 If the Goods are found to be defective in the expected quality or quantity (following our investigations), and you have complied with those conditions (in clause 7.4) in full, we will (at our option) replace the Goods or refund the price or appropriate proportion of the price. This remedy will be the maximum extent of our liability in such circumstances
7.6 Subject to clause 7.8, we are not liable for any other loss or damage (including direct, indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the delivery or supply of Goods or their use, even if we are negligent.
7.7 In any event, to the extent permissible by law, our total aggregate liability to you for all claims is limited to damages equal to the price of the Goods.
7.8 Nothing in these Terms restricts or limits our liability for death or personal injury resulting from negligence, under s.2(3) of the Consumer Protection Act 1987, or for fraud or fraudulent misrepresentation.

8 Specification

8.1 If we agree to supply Goods in accordance with your specifications or instructions you must then ensure that the specifications or instructions are accurate. You must ensure that Goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intend to use it.
8.2 On occasion, due to market availability, we may need to send an alternative product to that which you have ordered.

9 Return of Goods

9.1 We will accept the return of Goods from you only:
9.1.1 by prior arrangement (confirmed in writing);
9.1.2 on payment of an agreed handling charge (unless the Goods were defective when delivered); and
9.1.3 where the Goods are as fit for sale on its return as they were on delivery.

10 Export terms

10.1 This clause 10 shall apply to all exports unless otherwise agreed in writing between us.
10.2 Where the Goods are supplied by us to you by way of export from the United Kingdom then the 'Incoterms' of the International Chamber of Commerce which are in force at the time of the date when the contract is made shall apply. If there is any conflict between the Incoterms and these Terms then these Terms shall prevail.
10.3 You are responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties due.
10.4 Unless otherwise agreed between us the Goods shall be delivered fob the air or sea port of shipment and we shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
10.5 You are responsible for arranging the inspection of the Goods at our premises before shipment except where otherwise agreed. We are not liable for any defect in the

Goods which would be apparent on inspection unless a claim is made before shipment. We are not liable for any damage during transit.

10.6 To the extent permissible by law, we have no liability for death or personal injury arising from the use of the Goods where the Goods are to be delivered in the territory of another State (within the meaning of s26(3)(b) Unfair Contract Terms Act 1977).

11 Cancellation

11.1 If you cancel your order for any reason, you are liable to pay us for all stock (ready or unready for delivery) we may then hold (or to which we are committed) for the order.
11.2 We may suspend or cancel the order, by written notice if:
11.2.1 you fail to pay us any money when due (under the order or otherwise); or
11.2.2 you (or any of your property) becomes the subject of:
a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements or bankruptcy); or
b. any application or proposal for any formal insolvency procedure; or
11.2.3 you fail to honour your obligations under these Terms.
11.3 On termination of an order by us under clause you shall immediately pay to us all of our outstanding unpaid invoices and interest.
11.4 You may not cancel the order unless we agree in writing (and you agree that you will have no further claim against us in respect of that order).

12 Waiver and variations

12.1 We can vary or replace these Terms from time to time by giving written notice to you.
12.2 You may not vary these Terms without our written agreement.
12.3 Failure or delay by us in enforcing or partially enforcing any provision of these Terms shall not be construed as a waiver of any of our rights.

13 Force majeure

13.1 Suppose we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control (including without limitation acts of God, accident, explosion, fire, floods, transport delays, lock-outs, strikes and other industrial disputes and difficulty in obtaining supplies). We may then cancel or suspend any of our obligations to you, without liability.

14 General

14.1 Your order, our Sales Invoice and these Terms constitute the entire agreement between the parties. 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 such documents.
14.2 These Terms and any order made under them shall be interpreted in accordance with the laws of England and Wales. The English courts have nonexclusive jurisdiction.
14.3 If you are more than one person, each of you has joint and several obligations under these Terms.
14.4 If any of these Terms are unenforceable as drafted:
14.4.1 it will not affect the enforceability of any other of these Terms; and
14.4.2 if it would be enforceable if amended, it will be treated as so amended.
14.5 Any notice by either of us which is served under these Terms may be served by leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principal place of business. All such notices must be signed.
14.6 No contract will create any right enforceable (by virtue of the Contracts [Rights of Third Parties] Act 1999) by any person not identified as the buyer or seller.
14.7 Forward carriage will not be accepted unless prior arrangement and charges have been agreed.