

## **Pixley Berries (Juice) Limited**

### **GENERAL TERMS AND CONDITIONS OF SUPPLY**

#### **1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Buyer" means the organisation or firm that buys Goods from the Seller;
- 1.2 "Goods" means the products to be supplied to the Buyer by the Seller
- 1.3 "Seller" means Pixley Berries (Juice) Limited
- 1.4 "Contract" means the contract formed by the Seller's written acceptance of the Buyer's order
- 1.5 Any and all words used herein and not defined above shall have their natural meaning

#### **2 APPLICABILITY**

- 2.1 These Terms and 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 referred to, offered or relied upon by the Buyer whether in negotiation or at any stage in discussion between the parties, including any standard or printed terms tendered by the Buyer.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller. Notwithstanding sub-clause 2.1 the seller and the Buyer shall, in the event of dispute as to any term, first seek to reach a mutually satisfactory agreement

#### **3 PRICE AND PAYMENT**

- 3.1 The price of Goods shall be that offered by the Seller to the Buyer for the quantity referred to in the Seller's quotation. In the event that the Buyer's order is for a quantity different to that quoted, the Seller reserves the right to adjust its price as it thinks appropriate in the circumstances
- 3.2 In the absence of the Seller's written agreement to the contrary, payment in full for the Goods shall be made by the Buyer within thirty (30) days of delivery of the Goods by or on behalf of the Seller or collection of the Goods by or on behalf of the Buyer
- 3.3 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due until the date of actual payment at a rate of 5.00% per annum above the base rate of the Bank of England on the date when payment was due
- 3.4 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to decline to make delivery of any undelivered Goods due to be delivered under the Contract, and, without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery, terminate the Contract at its absolute discretion

## **4 DESCRIPTION**

- 4.1 Except where the Seller acts only as a processor of fruit supplied by or on behalf of the Buyer (see 4.3 below) the Seller sells the Goods according to and in compliance with the Seller's Product Specification, a copy of which is available to the Buyer on request. This Product Specification constitutes the only binding description of the Goods for the purposes of the Contract and no other description or specification which the Buyer may seek to apply to the Contract shall apply unless specifically agreed to in writing by the Seller. The Seller has the right to amend its Product Specification at its discretion
- 4.2 Where the Buyer intends to incorporate the Goods into other products, or further process the goods, or mix the Goods with any other materials or products, the Buyer accepts that any such processing, admixture or incorporation is carried out at the Buyer's own risk
- 4.3 Where the Seller acts only as a processor of fruit or other material supplied by or on behalf of the Buyer, the Seller accepts no responsibility for the quality of the fruit or other material supplied, or for the fitness of the processed product for the Buyer's purposes, except insofar as may be specifically agreed in writing by the Seller.
- 4.4 Whether the Goods are supplied by the Seller according to the Seller's Product Specification; or are supplied following processing by the Seller of fruit or other material supplied by or on behalf of the Buyer, the Seller shall accept responsibility for the lawful disposal of any and all byproducts or extraneous material arising from the production of the Goods and not included in the Product Specification. Unless otherwise agreed in writing by the Seller, the Buyer shall have no control over, or rights to, such byproducts or other material.

## **5 WARRANTIES**

- 5.1 The Seller warrants that the Goods shall conform to their specification and shall be of merchantable quality
- 5.2 In the event that the Buyer has concerns about the quality of the Goods, the Buyer shall immediately cease to use such remaining portion of the Goods as have not yet been used and inform the Seller of those concerns, together with such information as the Seller may reasonably require in order to allow the Seller to investigate the Buyer's concerns. The Goods, whether at the Buyer's premises or elsewhere, should be quarantined pending resolution of the concern. The Seller accepts no responsibility for Goods which the Buyer continues to use after becoming aware of possible quality issues.

## **6 SAMPLES**

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

## **7 DELIVERY**

- 7.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date agreed by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods when they are tendered for delivery.

7.2 The date of delivery agreed by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract.

## **8 RISK AND TITLE**

8.1 Risk in the Goods shall pass to the Buyer at the moment the Goods are delivered to the Buyer's nominated address for delivery. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

## **8.2 RETENTION OF TITLE**

Notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Seller has received payment in full for all goods delivered to the Buyer.

## **9 LIMITATION OF LIABILITY**

9.1 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

9.2 In all circumstances outside the scope of 9.1, the Seller's aggregate liability, in contract or tort, shall be limited to the Contract price of the Goods and shall not include any liability for loss of profit, consequential losses or other real or potential damage that the Buyer may contemplate or suffer.

## **10 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of this Contract shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties

## **11 CONFIDENTIALITY**

Buyers and/or their end-customers wishing to visit the Seller's manufacturing or other premises or to enter into detailed technical discussions with the Seller will be required to sign the Seller's Confidentiality Agreement (copy available on request)

## **12 FORCE MAJEURE**

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to: Acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials.

### **13 RELATIONSHIP OF THE PARTIES**

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be read as positioning either of the parties as being the agent of the other. Whilst it is recognised that Buyers may act for their end-customers as well as upon their own account, such onward relationships have no relevance to or bearing upon the Contract and no agency or other fiduciary relationship is intended by the parties to be created.

### **14 ASSIGNMENT AND SUB-CONTRACTING**

The Contract between the Buyer and Seller shall not be assigned or transferred, nor shall the performance of any obligation be sub-contracted to any third party by the Buyer, without the prior written consent of the Seller.

### **15 WAIVER AND SEVERABILITY**

- 15.1 The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.
- 15.2 If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

### **16 GOVERNING LAW AND JURISDICTION**

This Agreement and the Contract shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.