

NICHOLAS LYNCH LTD
UNIT 13 ASHBOURNE MANUFACTURING PARK
ASHBOURNE
CO. MEATH
TEL 00 353 1 8353666
FAX 00 353 1 8353677

TERMS AND CONDITIONS OF SALE

1. Definitions

Buyer means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for sale of Goods by the Company. Company means NICHOLAS LYNCH LTD having its principal place of business at UNIT 13 ASHBOURNE MANUFACTURING PARK, ASHBOURNE, CO MEATH.

Contract means any contract between the Company and the Buyer for the sale or supply of Goods by the company. Goods means any fish or fish product or seafood product whether frozen or fresh to be supplied or sold to the Buyer under the contract.

Order Confirmation means the Company's standard printed form for the acceptance of orders.

Writing includes electronical mail, facsimile transmission and comparable means of communication.

2. These Terms and Conditions to Prevail

2.1 All Contracts between the Company and the Buyer, whether made orally, or in Writing, are subject to these terms and conditions which shall be deemed to be incorporated into any contract or transaction between the Company and Buyer.

2.2 These terms and conditions shall supersede all prior understandings, and shall constitute the whole agreement, between the Company and the Buyer and shall not be modified or varied unless specifically accepted by the Company in Writing.

2.3 In the event of any conflict between these terms and conditions and any terms and conditions, whether express or implied, incorporated or referred to in any communication from the Buyer then these terms and conditions shall prevail and the Buyer's terms and conditions shall be excluded in whole from the Contract.

3. Quotations and Order Confirmation

3.1 A quotation, approach or representation to the Buyer by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation, approach or representation without notice at any time prior to the

Company's confirmation of the Buyer's offer to purchase the Goods.

3.2 The Company's confirmation of the Buyer's offer to purchase the Goods (including telephone and facsimile offers) shall be effective, and the Contract shall be deemed to come into existence, only where such acceptance is made by the Company issuing an order confirmation to the Buyer in respect of the sale but for the avoidance of doubt the Contract shall be conditional upon conclusion of the contract to purchase the Goods between the Company and the Company's supplier of the Goods and to any other conditions contained herein or in the Order Confirmation Form.

4. Representations

4.1 The Company's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Goods and, in entering into the Contract, the Buyer acknowledges that it relies solely on its own rights of inspection and rejection of the Goods (as set out on these

terms and conditions) and that it does not rely on, any such representations, warranties or undertakings.

5. Prices

5.1 Unless expressly stated otherwise by the Company, all prices shall be calculated and paid in Euro.

5.2 All prices are exclusive of VAT customs duty or other relevant taxes.

5.3 Unless expressly stated otherwise all prices are on an ex hold basis and the Buyer shall be liable to pay all charges for discharge, transport, packaging, storage and insurance.

5.4 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of production), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

6. Payment

6.1 Subject to any special terms agreed in Writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

6.2 Subject to satisfactory trade references being provided, the Buyer shall pay the price of the Goods within 30 days of the date of the Company's invoice unless alternative credit terms are agreed in Writing by the Company.

6.3 Any amount due by the Buyer to the Company under the Contract shall be payable in full without any set-off or counterclaim.

6.4 Time of payment shall be of the essence of all Contracts.

6.5 Payment must be made when due, notwithstanding that delivery may not have taken place and title in the Goods has not passed to the Buyer.

6.6 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-

6.6.1 cancel the Contract or suspend any further deliveries to the Buyer;

6.6.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and

6.6.3 charge the buyer interest (both before and after any judgment) on the amount unpaid pursuant to the European Communities (late payment in Commercial Transactions Regulations 2002) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6.6.4. Issue Court proceedings against the Buyer seeking payment of debt together with costs and interest thereon.

6.7. The Company, in its sole discretion, may require full or partial payment of the price prior to delivery or the provision of security for payment by the Buyer, in a form acceptable to the Company.

7. Delivery

7.1 Delivery of the Goods shall be made by the Company delivering the Goods to the address specified in Writing by the Buyer or, in the event that it is agreed that Goods are to be collected by

the Buyer, at the time when the Goods are collected by the Buyer from the port, depot or other premises specified by the Company in Writing.

7.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

7.3 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to 10% more or 10% less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to the quantity ordered.

7.4 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the installments in accordance with these terms and conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.5 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

8. Retention of Title and Lien

8.1 Property and title in and to the Goods shall not pass from the Company to the Buyer until all monies due by the Buyer to the Company under any contract between them, including any interest and charges, have been paid in full. Until such time as property and title in the Goods passes to the Buyer, the Buyer shall place the Goods in a suitable freezer or cold store at the expense of the Buyer and shall ensure that the Goods are kept separate from those of the Buyer and third parties and free from any lien, charge or encumbrance and properly stored, protected and insured and identified as the Company's property.

8.2 If, contrary to the terms of clause 8.1, the Buyer uses or sells the Goods or any of them fails to ensure they are kept in accordance with Clause 8.1, prior to property and title in the Goods passing to the Buyer then the Buyer shall be deemed to be the Company's agent and able to pass good title to them. However the Buyer shall hold the proceeds from any such sale on trust for the Company and interest at the rate and in the manner specified in Clause 6.6.3 shall accrue on such proceeds. The proceeds and accrued interest from any such sale shall be due to the Company on demand and the Buyer shall maintain complete and accurate financial records of any such sales and shall make these available to the Company for inspection and copying at any time on demand.

8.3 Until such time as property and title in the Goods passes to the Buyer, the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company, or its employees or agents, and, if the Buyer fails to do so, forthwith to enter upon any premises or property of the Buyer or any third party where the Goods are stored and to repossess the Goods.

8.4 The Buyer shall not be entitled to pledge or in any way charge by way of security, any of the Goods which remain the property of the Company but, if the Buyer does so, all moneys owing by the Buyer to the Company shall, without prejudice to any other remedy available to the Company, forthwith become due and payable.

9. Risk

9.1 Notwithstanding that property and title in the Goods has not passed under Clause 8 hereof, the risk of loss, damage or destruction to the Goods shall pass to the Buyer:-

9.1.1 in the case of Goods to be delivered by the Company, at the time of delivery, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods; or

9.1.2 in case of Goods which are to be collected by the buyer, at the time when the

Company notifies the Buyer that the Goods are available for collection.

10. Inspection and Rejection of Goods

10.1. The customer shall be deemed to have examined the Goods immediately on delivery and shall notify the Company:-

10.1.1. in the case of fresh Goods immediately by telephone and within 8 hours of delivery in writing email or fax and; in the case of frozen Goods within 23 days of delivery in Writing email or fax of any amount of the Goods which it rejects as being defective in quality or condition or not being in accordance with the Contract. The Customer shall retain any Goods so rejected in suitable freezers or cold stores for a period of 72 hours from such notification in writing to enable the Company to inspect them.

10.2. If delivery is not refused and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

10.3. If the Company, having received written notice in accordance with Clause 10.1, agrees with the Customer that a certain amount of the Goods does not conform to Contract the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price).

10.4. Any dispute between the Customer and the Company with respect to Goods which the Customer claims do not conform to Contract shall be referred to an independent third party appointed by the Company who shall act as an expert and not as an arbiter and whose decision shall be final and binding.

11 Warranty and Limitation of Liability

11.1. The Company warrants that the Goods comply with the requirements of Food Safety Legislation from time to time in force relating to sale of food in Ireland.

11.2. Goods are sold to a person dealing as a consumer Subject as expressly provided in these terms and conditions, and except where the (within the meaning of the European Communities (unfair Terms in Consumer contracts) Regulations 1995, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.3. Where the Goods are sold under a consumer transaction (as defined by the Consumer Protection, Act 2007) the statutory rights of the Buyer are not affected by these terms and conditions.

11.4. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, excepts as expressly provided in these terms a conditions.

11.5. Subject to Clause 7.5 and 11.4 the Company's liability (if any) to the Buyer whether in contract, tort or otherwise, in respect of any defect in the Goods or for any breach by the Company of any duty owed to the Buyer in connection with the Contract shall in no event exceed the invoice price.

12 Export Terms

12.1. In these terms and conditions. Incoterms means the 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 terms and

conditions, but if there is any conflict between the provisions of Incoterms and these terms and conditions the latter shall prevail.

12.2. Where the Goods are supplied for export from the Republic Of Ireland, the provisions of this Condition 12 shall (subject to any special terms agreed in Writing between the Buyer and the Company) apply notwithstanding any other provision of these terms and conditions.

12.3. The Buyer shall be 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 thereon.

13. Insolvency of Buyer

13.1. This clause applies if;-

13.1.1. the Buyer 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

13.1.2. an encumbrances takes possession, or a receiver is appointed of any of the property or assets of the Buyer; or

13.1.3. the Buyer ceases, or threatens to cease, to carry on business; or

13.1.4. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

13.2. If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14. General

14.1. the Buyer shall not be entitled to assign or transfer, in whole or in part, the benefit or burden of the Contract without the Company's prior written consent.

14.2. The rights and remedies of the Company set out in these terms and conditions shall be in addition, and without prejudice, to any other rights and remedies which may be available to the Company at common law or under statute.

15 Governing Law

These terms and conditions shall be governed by and construed in accordance with the Law of Ireland and the parties hereto hereby choose and submit to the jurisdiction of the Irish courts.

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