

Terms and conditions of trading



Gtek Foods Limited

Terms Of Trading

1 Business customer and consumers

- 1.1 Some of these terms apply to consumers only, some apply to business customers only. Those terms are marked as such.
- 1.2 All other terms apply to all customers
- 1.3 You are classified to us as a business customer if you indicate to us that the goods supplied by us will be used in the course of your business.
- 1.4 If you are not a business customer you are a consumer. You have certain statutory rights as a consumer, which are not effected by these terms. Contact your local trading standards office for more information. Words in italic type are legal words, which clarify rather than alter the meaning of the relevant clauses.

2 Price

- 2.1 The price quoted includes VAT (unless otherwise stated). VAT will be charged at the rate applying at the time of delivery.
- 2.2 Our quotations lapse after 24 hours (unless otherwise stated)
- 2.3 The price quoted includes delivery (unless otherwise stated)
- 2.4 Business customers: unless otherwise stated, the price quoted to business customers is an illustrative estimate only and the price charged will be our price current at the time of delivery.
- 2.5 Business customers: rates of tax and duties on the goods will be those applying at the time of delivery.
- 2.6 Business customers: at any time before delivery we may adjust the price to reflect any increase in our costs of supplying the goods. Price does not include any charges for pallets on which pallets are delivered. Pallets remain our property at all times. In the event that you fail to return or make available such pallets, in good condition, within 30 days following delivery of any goods you must reimburse us for the full price of the lost or damaged pallets.

3 Delivery

- 3.1 All delivery times quoted are estimates only.
- 3.2 If we fail to deliver within a reasonable time, you may (by informing us in writing) cancel the contract however.
- 3.2.1 You may not cancel if we receive your notice after the goods have been dispatched.
- 3.2.2 If you cancel the contract you can have no further claim against us under that contract
- 3.3 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 delay (including consequential loss or increase in the price of the goods)
- 3.4 We may deliver the goods in instalments. Each instalment is treated as a separate contract.
- 3.5 We may decline to deliver if:
 - 3.5.1 we believe it would be unsafe, unlawful or unreasonably difficult to do so or:
 - 3.5.2 the premises (or the access to them) are unsuitable for our vehicles or:
 - 3.5.3 payment terms have not been adhered to.

4 Risk

- 4.1 The goods are all your risk from the time of delivery.
- 4.2 Delivery takes place either:
 - 4.2.1 At our premises or contracted outside cold store(s) if you are collecting them or arranging carriage or:
 - 4.2.2 At your premises or address specified by you (if we are arranging carriage) or:
 - 4.2.3 According to the agreed INCOTERM for international and domestic trade contracts.
- 4.2.4 You must inspect the goods on delivery. If you have a complaint in respect of the nature, substance, quality or weight of any fresh meat it must be reported immediately after receipt by telephone or facsimile and written confirmation within 24 hours. In respect of frozen meat by telephone or facsimile within 48 hours after receipt and written confirmation within 7 days. You must give us (and any carrier) a fair chance to inspect the damaged goods. In any case a minimum of 80% of the goods must be made available for inspection.

5 Payment Terms

- 5.1 You are to pay us cleared funds in advance of any delivery being instructed unless you have an approved credit account setup with Gtek Foods Ltd.
- 5.2 Business customers: if you have an approved credit account payment is due no later than 28 days after the date of our invoice unless otherwise agreed in writing.
- 5.3 If you fail to pay Gtek Foods Ltd in full on the due date we may:
 - 5.3.1 Suspend or cancel future deliveries
 - 5.3.2 Cancel any discount offered to you
 - 5.3.3 Charge you interest at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1996;
 - a. Calculated (on a daily basis) from the date of our invoice until payment
 - b. Compounded on the first day of each month and
 - c. Before and after any judgment (unless a court orders otherwise)
- 5.3.4 Claim fixed sum of compensation from you under s.5a of the Act to cover our credit control overhead costs; and
- 5.3.5 Recover (under clause 5.8) the cost of taking legal action to make you pay.
- 5.4 If you have approved credit account we may withdraw it or reduce your credit limit or bring forward your due date for payment. We may take any of these actions at any time and without notice.
- 5.5 Business customers: you do not have the right to off set any unapproved claimed amount from anything that you owe Gtek Foods Ltd.
- 5.6 Consumers: you may only offset money that you owe Gtek Foods Ltd as part of any claim only by first obtaining written confirmation from a director of the company authorising you to do so.
- 5.7 While you owe the money to us we have a right to keep in our possession any property we may hold of yours until you have paid us in full.
- 5.8 You are to indemnify us in full and hold us harmless from all expenses and liabilities we may incur (directly or indirectly and including finance costs and legal costs on a full indemnity basis) following any breach by you of any of your obligations under these terms.
- 5.9 Consumers: clause 5.8 means that you are liable to us for losses we incur because you do not comply with these terms. We may claim these losses from you at any time and if we have to take legal action we will ask the court to make you pay our legal costs.

6 Title

- 6.1 Consumers: your statutory rights are unaffected
- 6.2 Business customers: until you pay all debts you may owe us:
 - 6.2.1 All goods supplied by us remain our property;
 - 6.2.2 You must store them so that they are clearly identifiable as our property;
 - 6.2.3 You must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for us;
 - 6.2.4 You may use those goods and sell them in the ordinary course of your business, but not if:
 - a. We revoke that right (by informing you in writing); or
 - b. You become insolvent.
- 6.3 Business customers: you must inform us (in writing) immediately if you become insolvent.
- 6.4 Business customers: if your right to use and sell the goods ends you must allow us to remove the goods.
- 6.5 Business customers: we have your permission to enter any premises where the goods may be stored:
 - 6.5.1 At anytime, to inspect them; and
 - 6.5.2 After your right to use and sell them has ended, to remove them, using reasonable force if necessary.
- 6.6 Despite our retention of title to the goods we have the right to take legal proceedings to recover the price of the goods supplied should you not pay us by the due date.
- 6.7 You are not our agent. You have no authority to make any contact on our behalf or in our name.

7 Warranties

- 7.1 We warrant the goods:
 - 7.1.1 Comply with their description; and
 - 7.1.2 Are free from material defect at the time of delivery (as long as you comply with clause 7.4).
- 7.2 Business customers: we give no other warranty (and exclude any warranty, term or condition that would otherwise be implied) as to the quality of the goods or their fitness for any purpose.
- 7.3 Consumers: that warranty in clause 7.1 is in addition to your statutory rights.
- 7.4 If you believe that we have delivered goods which are defective in material or workmanship you must:
 - 7.4.1 inform us (in writing) with full details as soon as possible (see clause 4.3.1); and
 - 7.4.2 Allow us to investigate (we may need access to you premises and product samples) (see clause 4.3.1).
- 7.5 If the goods are found to be defective in material or workmanship (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.
- 7.6 We are not liable for any other loss or damage (including indirect or consequential loss, financial loss, loss of profits or loss of use) arising from the contract or the supply of goods or their use, even if we are negligent.
- 7.7 Our total liability to you (from one single cause) for damage to property caused by our negligence is limited to two and a half millions pounds.
- 7.8 For all other liabilities not referred to elsewhere in these terms our liability is limited in damages to the price of the goods.
- 7.9 Nothing in these terms restricts or limited our liability for death or personal injury resulting from negligence.

8 Specification

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Website
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- If we prepare the goods in accordance with your specifications or instructions you must ensure that:
- 8.1.1 the specifications or instructions are accurate;
 - 8.1.2 Goods prepared in accordance with those specifications or instructions will be fit for the purpose for which you intended to use them; and
 - 8.1.3 Your specifications or instructions will not result in the infringement of any intellectual property rights of a third party or in the breach of any applicable law or regulation.
- 8.2 Business customers: We reserve the right;
- 8.2.1 To make any changes in the specifications of our goods that are necessary to ensure they confirm to any applicable safety or statutory requirements; and
 - 8.2.2 To make without notice any minor modifications in our specifications we think necessary or desirable.
- 9** **Return Of Goods**
- We will accept the return of any 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 their return as they were on delivery.
- 10** **Export Terms**
- 10.1 Where the goods are supplied by us to you by way of the United Kingdom clause 10 of these terms applies (except to the extent that it is inconsistent with any written agreement between us).
 - 10.2 The "Intercoms" of the International Chamber Of Commerce, which are in force at the time when the contact is made apply to exports but these terms prevail to the extent that there is any inconsistency.
 - 10.3 Unless otherwise agreed the goods are supplied ex works our place of manufacturer or storage.
 - 10.4 Where the goods are to be sent by us to you by a route including sea transport we are under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
 - 10.5 You are responsible for arranging testing and inspection of the goods at our premises before shipment (unless 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. We are not liable for death or personal injury arising from the use of the goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977)
- 11** **Cancellation**
- 11.1 You may not cancel the order unless we agree in writing (and clauses 3.2.2 and 11.2 then apply).
 - 11.2 If the order is cancelled (for any reason) you are then to pay us for all stock (finished or unfinished) that we may then hold (or to which we are committed) for the order.
 - 11.3 We may suspend or cancel the order by written notice if:
 - 11.3.1 you fail to pay us any money when due (under the order or otherwise);
 - 11.3.2 you become insolvent;
 - 11.3.3 you fail to honour your obligations under these terms.
- 12** **Waiver And Variations**
- Any waiver or variation of these terms is binding in honour only unless:
- 12.1.1 Made (or recorded) in writing;
 - 12.1.2 Signed on behalf of each party; and
 - 12.1.3 Expressed stating an intention to vary these terms.
 - 12.2 All orders that you place with us will be on these terms (or any that we may issue to replace them). By placing an order with us you are expressly waiving any printed terms you may have to the extent that they are inconsistent with our terms.
- 13** **Force Majeure – business customers only**
- 13.1 If we are unable to perform our obligations to you (or able to perform them only at unreasonable cost) because of circumstances beyond our control we may cancel or suspend any of our obligations to you without liability.
 - 13.2 Examples of those circumstances include act of God, accident, explosion, war, terrorism, fire, flood, transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.
- 14** **General**
- 14.1 English law is applicable to any contract made under these terms. The English and Welsh courts have nonexclusive jurisdiction.
 - 14.2 If you are more than one person each of you is liable for all of your obligations under these terms (*joint and several liability*).
 - 14.3 If these terms are unenforceable as drafted
 - 14.3.1 it will not effect the enforceability of any other of these terms; and
 - 14.3.2 if it would be enforceable if amended it will be treated as so amended.
 - 14.4 We may treat you as insolvent if:
 - 14.4.1 you are unable to pay your debts as they fall due
 - 14.4.2 you (or any item of your property) becomes the subject of:
 - a. Any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);
 - b. Any application or proposal for any formal insolvency procedure; or
 - c. Any application, procedure or proposal overseas with similar effect or purpose.
 - 14.5 Business customers: all brochures, catalogues and other promotional materials are to be treated as illustrative only. Their contents form no part of any contract between us and you should not rely on them in entering into any contract with us.
 - 14.6 Business customers: any notice by either of us which is to be served under these terms may be served leaving it at or by delivering it to (by first class post or by fax) the other's registered office or principle place of business. All such notices must be signed.
 - 14.7 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.
 - 14.8 The only statements upon which you may rely in making the contract with us are those made in writing by someone who is (or whom you reasonably believe to be) our authorised representative and either:
 - 14.8.1 Contained in our estimate (or any covering letter) and not withdrawn before the contract is made; or
 - 14.8.2 Which expressly state that you may rely on them when entering into the contract.
 - 14.9 Nothing in these terms affects or limits our liability for fraudulent misrepresentation.

On receipt of an electronic stationary item from Gtek Foods Ltd be it sales order, purchase order, invoice or statement this will constitute that our Terms and Conditions of Trading have been supplied to your company and that you are authorised to agree these terms on behalf of your employer and or organisation for whom you work. If you are unauthorised to agree to these terms it is your responsibility to seek authorisation from a person or persons within your company and or organisation to gain the appropriate authorisation. Any dispute to these Terms and Conditions of Trading must be made in writing prior to any transactions taking place and sending to the managing director of Gtek Foods Ltd namely Charles Brackenbury via email charles@gtekfoods.co.uk for further exam. In the event that you dispute our Terms and Conditions of Trading no transactions may take place until such time as you receive a response in writing from Charles Brackenbury.