

HAWKINS WATTS LIMITED - TERMS OF TRADE

1. Definitions

1.1. In these Terms of Trade:

"Customer" shall mean any person or entity to which HWL supplies Goods or services to in accordance with these Terms of Trade.

"Goods" shall mean any functional food ingredients or food processing products supplied by HWL to the Customer, as described on any invoice or other document of HWL subject to these Terms of Trade, as well as any other goods or property supplied by HWL to the Customer, and in each case includes all such goods and property so supplied: (a) whether or not by item or kind that enables them to be identified; (b) which are or comprise inventory of the Customer.

"HWL" shall mean Hawkins Watts Limited.

"PPSA" shall mean the Personal Property Securities Act 1999.

"Price" shall mean the amount invoiced by HWL to the Customer, being the cost of the Goods plus any other costs incurred by HWL in delivering the Goods to the Customer. The Price shall be exclusive of Goods and Services Tax (unless stated otherwise) and the Customer shall pay to HWL Goods and Services Tax calculated on the Price.

The terms "after-acquired property", "inventory", "perfected", "proceeds", "purchase money security interest", "rights", and "security interest" have the respective meanings given to them under or in the context of the PPSA.

2. Acceptance of Order

2.1. Any order for Goods placed by the Customer with HWL shall be irrevocable and binding on the Customer and shall be deemed to be acceptance by the Customer of the provisions of these Terms of Trade.

2.2. HWL may, at its sole discretion, decline or accept an order in whole or in part.

2.3. HWL shall not be required to accept an order unless the Customer provides an order number or other notification of its commitment acceptable to HWL.

3. Price and Payment

3.1. In the absence of any written agreement by HWL to the contrary, the Goods shall be deemed to be sold to the Customer at the Price.

3.2. Notwithstanding clause 3.1, the Price may be increased by the amount of any reasonable increase in the cost of the Goods to HWL between the date of the order and the date of delivery of the Goods to the Customer.

3.3. The Customer shall pay the Price on or before the 20th day of the month following the date of HWL's invoice.

3.4. HWL may charge the Customer interest at the rate of 2.5% per month (or part month thereof) on any amount not paid by the Customer to HWL by its due date.

3.5. HWL may, at any time, and at its discretion, allocate any payment received from the Customer towards any sum owed by the Customer to HWL, including in such manner as preserves the maximum value of any purchase money security interest HWL may have in the Goods. HWL may do so at the time of receipt of that payment or at any time thereafter.

4. Exclusion of Liability

4.1. HWL excludes liability for all statements, whether express or implied, made prior to the acceptance by the Customer of these Terms of Trade, or that are not set out expressly in these Terms of Trade.

4.2. The Customer acknowledges that it has not been influenced into purchasing the Goods as a result of any representations made by HWL, or its employees or agents, that are not set out in these Terms of Trade.

4.3. To the extent that it is lawful to do so, HWL excludes all liability in respect of the Goods arising from warranties, guarantees, or conditions, implied by statute and makes no representations or gives any warranties whether express or implied in relation to the Goods.

4.4. The Customer undertakes that it acquires the Goods for the purposes of a business and accordingly, to the extent that it is lawful to do so, the guarantees contained in the Consumer Guarantees Act 1993 are excluded.

4.5. HWL shall not be liable to the Customer or any other party for any loss (including economic loss) arising from any breach of contract, or breach of any statutory obligation, or error, or omission, or advice given, including negligence, on the part of HWL or its employees or agents. The benefit of this particular term shall extend to such employees or agents of HWL.

4.6. In no circumstances shall HWL's liability for defective Goods, or any other acts or omissions, including negligence, on the part of HWL or its employees or agents, exceed the Price of the Goods in respect of which any claim is made.

4.7. HWL excludes all liability, including negligence, in respect of any advice that it may provide to the Customer or any third party claiming through the Customer. HWL gives no warranty or guarantee, whether express or implied, regarding advice given by it, its employees, its agents, or its suppliers.

4.8. HWL recommends that Customers conduct their own tests to determine the suitability of any Goods, products or information from HWL. No liability is accepted for the infringement of any patents or legislation as a result of the Customer receiving Goods or advice from HWL or its employees or agents.

5. PPSA

5.1. The Customer grants a security interest to HWL in each and every part of the Goods as security for such parts and for any other amounts owing by the Customer to HWL ("Customer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure the maximum benefit and protection for HWL by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to HWL, as security for the Customer's indebtedness and obligations, a security interest in all of the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property") in or which the Customer has rights, and which has not been supplied by HWL to the Customer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by HWL to the Customer.

5.2. The Customer agrees to do anything that HWL reasonably requires to ensure that HWL has a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase Price for that part.

6. Non Application of the PPSA

6.1. The Customer agrees that if, at any relevant time, HWL does not at that time have priority over all other secured parties in respect of any part of the Goods, then the Customer and HWL will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(1) (but amended only by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into.

6.2. The Customer waives the right to receive a copy of the verification statement verifying registration of a financing or financing change statement in respect of the security interest in these Terms of Trade.

6.3. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms of Trade or the security interest established by these Terms of Trade and the Customer waives its rights under sections 120(2), 121, 125, 129, 131 and 132 of the PPSA.

7. Default

7.1. The following shall constitute a default by the Customer under these Terms of Trade:

7.1.1. Non payment of any sum due to HWL by the due date for that sum.

7.1.2. The Customer intimating that it will not pay any sum due to HWL by the due date for that sum.

7.1.3. If any other creditor of the Customer seizes any Goods or any other creditor intimates that it intends to seize any Goods.

7.1.4. If any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to HWL remains unpaid.

7.1.5. The Customer is adjudged bankrupt or placed into liquidation, or a receiver is appointed to any part of the Customer's assets, or a landlord distrains against any of the Customer's assets.

7.1.6. A court judgment is entered against the Customer and remains unsatisfied for seven (7) days.

7.1.7. Any material adverse change in the financial position of the Customer occurs.

7.2. The Customer gives irrevocable authority to HWL to enter any premises occupied by the Customer, or on which Goods are situated, at any reasonable time after default by the Customer (or before default if HWL believes default is likely) to remove and repossess any Goods and any other products into which the Goods have become part of. HWL shall not be liable for any costs or losses incurred by the Customer or any third party as a result of exercising any of its rights under these Terms of Trade.

7.3. HWL may resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs), or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as HWL reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

7.4. At any time following a default, HWL reserves the right to appoint any person to be a receiver of all or any of the Goods. The receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods, without in any way affecting any other powers conferred on a receiver by law or otherwise.

7.5. On a default by the Customer, HWL may reallocate any payments previously received and allocated.

7.6. HWL may charge the Customer any costs (including legal costs) incurred by HWL in the enforcement of any rights contained in these Terms of Trade.

8. Risk and Damage

8.1. Risk in the Goods shall pass to the Customer on delivery of the Goods to the Customer's premises or to such other location as specified by the Customer. Whenever the Goods are transported from HWL by a carrier requested by the Customer, risk in the Goods shall pass to the Customer at the time the Goods are taken by that carrier.

8.2. Following damage to the Goods in transit where HWL is responsible for freight costs, notify the Freight Forwarder concerned and send full particulars of damage (including invoice, freight numbers and the date of the notification of damage to the Freight Forwarder) to Hawkins Watts Ltd, within 7 days of delivery. No credit can be issued unless this procedure is adhered to.

8.3. Following damage to the Goods in transit where the Customer is responsible for freight costs, any claim for damage must be made directly against the relevant Freight Forwarder concerned. HWL accepts no responsibility for damage in transit in such instances.

8.4. In any instance where the Customer believes that Goods supplied by HWL are damaged or below acceptable quality (other than where clauses 8.2 or 8.3 would apply), any claim to be made on HWL in respect of those Goods must be notified to HWL within 7 days of delivery. With reference to the surrounding facts, HWL reserves the right to reject any such claim if, in the reasonable opinion of HWL, the quality of the Goods delivered is considered acceptable.

9. Miscellaneous

9.1. These Terms of Trade represent the entire contract between HWL and the Customer. Each supply and sale shall be effected pursuant to these Terms of Trade unless otherwise agreed in writing. Any invoice or other document evidencing or describing any Goods in incorporated into and forms part of these Terms of Trade.

9.2. Failure by HWL to enforce any provision of these Terms of Trade shall not be deemed to be a waiver by HWL of its rights pursuant to that provision.

9.3. If any provision in these Terms of Trade is found to be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.