

# CONDITIONS OF SALE

- 1. General**

These terms and conditions apply to all contracts made by the Customer with MELROB NUTRITION LTD (Melrob Nutrition). Registered in England No. 09613126. They contain exclusions and limitations of liability. Any amendments to or departure from these terms shall be invalid unless previously agreed in writing by an Authorised Representative. These terms and conditions contain no limitations or exclusions of liability for loss arising out of death or personal injury caused by negligence or for any other liability that cannot be excluded or limited by English law. The provisions in these terms and conditions do not affect the statutory rights of a consumer.
- 2. Definitions**
  - 2.1 The Following definitions shall apply to these Standard Terms and to any additional contract terms incorporating them.
    - (i) 'Seller' means Melrob Nutrition Ltd. Registered in England No. 09613126.
    - (ii) 'Customer' means any person, firm or company to whom the Seller supplies Goods.
    - (iii) 'Goods' means the products and services (including any instalments or parts of them) which the Seller agrees to supply to the Customer.
    - (iv) 'Loss' means loss of profit, damages, costs, legal expenses or other losses.
    - (v) 'Liability' means any liability arising by reason of any representation (unless fraudulent), or any breach of any implied term or any duty at common law, or under any statute, or under any express term of these Standard Terms.
- 3. Application of Conditions**
  - 3.1 Any written order or other communication of any kind from the Customer containing any terms and/or conditions inconsistent with these Standard Terms shall not be accepted by the Seller to the extent of such inconsistency and such inconsistent terms and/or conditions shall be deemed to be severable and shall be severed from the order or communication without otherwise affecting the validity thereof.
  - 3.2 No employee, servant or agent of the Seller has authority to vary these Standard Terms orally and no variation of these Standard Terms shall be effective or binding on the Seller unless made in writing and signed by a Director of the Seller.
- 4. Orders and Specifications**
  - 4.1 No order for supply arising from a quotation or otherwise shall be deemed to be accepted or constitute a legally enforceable contract with the Seller until accepted in writing by the Seller or until delivery of the Goods whichever shall be the earlier.
  - 4.2 No responsibility is accepted by The Seller for any inaccuracy or error in orders given by telephone.
  - 4.3 The descriptions, specifications and illustrations contained in Brochures shall not form part of the contract. Any description or sample given of the goods is by way of identification only and does not constitute a sale by description or sample.
- 5. Price and Payment**
  - 5.1 All prices and terms quoted by the Seller or shown in any Brochure may be altered without notice.
  - 5.2 The Customer shall pay the price plus VAT chargeable upon the sale of the Goods.
  - 5.3 If the Customer fails to pay the amount due then, in addition to any other right or remedy available to the Seller, the Seller may do either or both of the following:
    - (a) Charge the Customer interest (after as well as before judgment) on the amount unpaid at the rate of two percent per annum above the base lending rate of HSBC Bank Plc from time to time until full payment is made.
    - (b) Cancel the contract or suspend any further deliveries to the Customer without notice and without liability.
  - 5.4 Prices of Goods, both quoted and printed, are inclusive of packaging, insurance and transportation to an address within the mainland of Great Britain, unless otherwise agreed in writing.
- 6. Delivery & Storage**
  - 6.1 The place for delivery of the Goods shall be notified by the Customer to the Seller and will be within Europe.
  - 6.2 Any date or period quoted by the Seller for despatch is given in good faith by way of estimate only. While The Seller will endeavour to deliver within the period stated, such date or period is not to be of the essence of the contract and the Customer shall be bound to accept the goods when they become available. The Seller shall not be liable for any Loss or delays in transit or consequential losses or losses including loss of profit resulting in any way in respect of late delivery howsoever caused even in such cases as the Seller have expressly agreed in writing a delivery date, nor shall such failure to deliver on the date or within the period named by The Seller be deemed to be a breach of contract.
  - 6.3 The Seller shall have the right to effect delivery by instalments. If the Goods are to be delivered in instalments, each delivery will constitute a separate contract. The Customer may not treat a contract as a whole as repudiated if the Seller fails to deliver any one or more of the instalments or if the Customer has a claim in respect of any one or more of the instalments.
  - 6.4 If access is not available to the location stated in the contract the Seller or their carriers reserve the right to deliver to the nearest convenient location and to notify the Customer of their action.
- 7. Inspection**
  - 7.1 The Customer is under a duty to inspect the goods on delivery or on collection as the case may be.
  - 7.2 Claims for damage in transit or shortage in delivery of the Goods will only be considered if the carriers and the Seller receive written notification of such damage within three working days of delivery or in the event of loss of goods in transit within fourteen working days of the date of consignment. The notification must include the purchase order number and details of the claim. When goods are accepted from carriers without being checked the delivery book must be signed 'Not Examined'.
  - 7.3 In all cases where defects or shortages are complained of, the Seller shall be under no liability in respect thereof unless an opportunity to inspect the goods is afforded to the Seller before any use is made thereof or any alteration or modification is made thereto by the Customer.
  - 7.4 Any claim must be made before the Customer repackages the Goods.
  - 7.5 Subject to clauses 7.2, 7.3 and 7.4, the Seller shall, at their sole discretion either make good any shortage in the Goods or credit the Customer for the value of the shortfall. Where appropriate the Seller will replace any Goods damaged in transit as soon as it is reasonably able to do so or at its sole discretion credit the Customer for the value of the damaged goods. Otherwise the Seller shall be under no liability whatsoever or howsoever arising from such shortage or damage.
  - 7.6 If the Customer fails to take delivery, the Seller may, in addition to its rights under clause, 6.4 do either or both of the following:-
    - 7.6.1 Store the Goods until actual delivery and charge the Customer for all costs incurred, including insurance, storage and transportation.
    - 7.6.2 Sell the Goods at the best price readily obtainable by the Seller, invoice the Customer for all costs incurred and retain any proceeds of sale until all payments due to The Seller by the Customer have been paid.
  - 7.7 The Customer must observe all instructions given by the Seller in relation to the storage and packaging of the Goods.
- 8. Liability**
  - 8.1 The Seller shall have no Liability to the Customer for any indirect, special or consequential Loss of the Customer arising out of or in connection with any Contract (except in respect of death or personal injury resulting from the negligence of the Seller).
  - 8.2 Subject to the provisions of paragraph 8.1 the Seller shall have no liability to the Customer in the event that the Customer fails to observe the instructions referred to in paragraph 7.6.
  - 8.3 The Seller makes every effort to ensure that the information contained in their Brochure, promotional material and printed media is accurate. However, The Seller shall not accept liability for any errors or omissions and makes no representations or warranties of any kind, expressly or impliedly in respect to such information.
  - 8.4 Nothing in these Standard Terms shall affect the statutory rights of a consumer.
  - 8.5 The responsibility for marketing any food product ultimately lies with the Customer (the marketer) because:
    - 8.5.1 The determination of whether or not any product becomes classed as a medicine or not will depend on whether the finished product makes claims which are considered medicinal in the country in which the Customer markets it.
    - 8.5.2 Individual ingredients may also be classed as medicinal in other countries and we advise you to check their suitability prior to marketing them in your chosen country.
    - 8.5.3 The Customer (marketer) should confirm that their finished product is legal for sale as a food prior to marketing it, and we advise you to be familiar with EU Food Law or relevant local law to ensure you continue to meet any current local regulations where you may market your products.
  - 8.6 The Seller will not be held responsible for consequential loss arising from packing a bulk product into consumer packs before confirming that is a) in specification, b) meets the product label claim, or c) complies with local marketing regulations.
- 9. Exclusive Label Goods**
  - 9.1 The Customer must resell the Goods in the same condition as delivered, with the exception of onward packaging of the Goods into consumer packs.
  - 9.2 The Customer must not take any action that has the effect of converting the Goods into a different product.
  - 9.3 The Customer must ensure that the Goods conform at all times with the original label claims.
  - 9.4 If the Seller is requested to supply the Goods in packaging or bearing labels or logos supplied, designed or commissioned by the Customer, the Customer will be solely responsible for ensuring that these do not infringe any legal requirements or any third party intellectual property rights. The Customer will indemnify the Seller against any loss, cost, expense or liability arising as a result of infringement of law or breach of third party intellectual property rights in connection with labels, logos or packaging, designs or artwork applied to or supplied with the Goods on the Customer's instructions.
- 10. Risk and Property**
  - 10.1 Risk of damage to or loss of the Goods will pass to the Customer on delivery at the agreed address.
  - 10.2 Notwithstanding delivery and the passing of risk in the Goods, property in the Goods will not pass from the Seller until the Seller has received in cash or cleared sums full payment of the Price.
  - 10.3 Until property passes to the Customer:
    - 10.3.1 The Customer will keep the Goods as the Seller's Fiduciary bailee. The Customer will keep the Goods separate from those of the Customer and third parties and keep the Goods properly stored, protected, insured and identified as the Seller's property.
    - 10.3.2 Subject to 10.3.3 below the Customer may resell the Goods in the ordinary course of its business. Until the Customer has accounted to The Seller for the proceeds of sale of the Goods, the Customer will hold the relevant proceeds on trust for the Seller. The Customer will keep all such proceeds separate from any monies or property of the Customer and third parties.
    - 10.3.3 The Seller may revoke the Customer's power of sale in respect of the Goods. The power of sale will automatically cease if a petition is presented, any order made or resolution passed or any other action taken for a with a view to the Customer's winding up or administration or (being an individual) bankruptcy, or an administrative receiver, receiver, liquidator or administrator or similar officer is appointed in respect of the whole or any part of its undertaking property or assets or if it convenes a meeting for the purpose of making, or proposing to enter into, any agreement for the benefit of its creditors. This also applies to any similar proceedings in any jurisdiction.
    - 10.3.4 The Seller may at any time require the Customer to deliver up to the Seller those Goods which have not been re-sold. If the Customer fails to do so the Seller may enter the premises of the Customer where the Goods are stored or reasonably believed to be stored and repossess them.
    - 10.3.5 If the Seller reasonably believes that any of the circumstances set out in 10.3.3 above may occur in relation to the Customer and notifies the Customer of its belief, then in addition to any other right or remedy available to the Seller, the Seller may terminate the contract or suspend any further deliveries under the contract without any liability to the Customer. If the Goods have been delivered but not paid for, the price and all other amounts payable by the Customer to the Seller shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11. General**
  - 11.1 If either the Seller or the Customer is affected by Force Majeure it shall immediately notify the other party in writing. Neither the Seller nor the Customer shall be deemed to be in breach of any Contract or otherwise liable to the other for any delay in performance or any non-performance of its obligations hereunder to the extent that any delay or non-performance is due to Force Majeure of which it has notified the other party and the time for performance of the obligations shall be extended accordingly. For the purpose of this clause Force Majeure shall mean any act or cause beyond the reasonable control of that party including but without limitation labour disturbances (including strikes and lock-out, slowdowns, picketing or boycotts) acts of God, fire, storm, explosion or governmental action.
  - 11.2 All Intellectual Property Rights in the Goods belong to the Seller. Any formulation certificate delivered to the Customer may be produced as required by any regulatory authority but shall not otherwise be used or disclosed without the written consent of the Seller.
  - 11.3 Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to ban the exercise or enforcement thereof at any time or times thereafter.
  - 11.4 Any notice hereunder shall be deemed to have been duly given if delivered by hand or sent by prepaid first class post to the party concerned at its last known address. Notices sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered 48 hours after despatch and in proving the fact of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted. Any notice hand delivered shall be deemed to have been delivered on the date of actual delivery.
  - 11.5 These Standard Terms together with the Detailed Terms shall constitute the entire agreement between the Seller and the Customer. All previous terms and conditions of the Seller are hereby superseded and excluded from any Contract unless expressly agreed in writing by a director of Melrob Nutrition.
  - 11.6 These Standard Terms and any Contract shall be governed by and construed exclusively in accordance with English law and the parties hereby agree to submit any dispute arising therefrom to the exclusive jurisdiction of the English courts.