

Brakes Terms and Conditions of Sale

1. DEFINITIONS

In these terms and conditions:

- 1.1 "The Company" means Brake Bros Limited and all of its divisions and subsidiary companies.
- 1.2 "The Customer" means any person, firm, company or other legal entity which places an order, or buys any Products from the Company and includes the employees, servants, agents, principals (whether disclosed or undisclosed) or sub-contractors of any such person, firm, company or other legal entity.
- 1.3 "Customer Nominated Product" means a Product that is not sourced by the Company but which at the request of the Customer the Company has agreed to purchase from the supplier thereof and supply to the Customer.
- 1.4 "Food" means any food or beverage.
- 1.5 "Equipment" means any machine or equipment.
- 1.6 "Non-Food" means any goods which are not Food or Equipment.
- 1.7 "Contract" means a contract between the Company and the Customer for the sale and purchase of the Products.
- 1.8 "Products" means any Food and/or Equipment and/or Non-Food agreed in the Contract to be supplied by the Company to the Customer.
- 1.9 "Statutory Interest" means statutory interest as defined in the Late Payment of Commercial Debts (Interest) Act 1998 as amended & supplemented by the Late Payment of Commercial Debts Regulations 2002.
- 1.10 "Terms and Conditions" means these terms and conditions of sale.
- 1.11 "Late Payment Compensation Fee" please refer to para 7.5.

2. APPLICABILITY OF TERMS AND CONDITIONS

These Terms and Conditions shall be incorporated into the Contract and shall apply in place of and prevail over any terms and conditions contained or referred to in any communication from the Customer or implied by custom or practice. Other purported terms and conditions are expressly rejected by the Company.

3. ORDERS AND CONTRACTS

By placing an order with the Company either via the Company's telesales department or the Company's website the Customer is offering to contract with the Company on the basis of these Terms and Conditions. The Contract shall be formed when the Company acknowledges acceptance of the Customer's order or delivers the Products to the Customer whichever occurs earlier. The Contract is subject to availability of stock. Neither the Company's price list nor any prices which appear on the Company's website constitute an offer and the Company may amend its published prices at any time prior to formation of the Contract in accordance with this Condition. Any current price list replaces all previous price lists. Prices are quoted exclusive of VAT which shall be charged if applicable.

4. VARIATIONS AND DISCOUNTS

- 4.1 Unless otherwise agreed in writing the Company reserves the right to make such amendments to the Contract as it thinks fit or to terminate the Contract should any information or data supplied by the Customer to the Company prove to be incomplete or inaccurate in any respect.
- 4.2 The Company reserves the right to vary or alter the specification of Products without notice unless otherwise agreed in writing with the Customer.
- 4.3 Any discount which may be agreed between the Customer and the Company will only be binding on the Company if such an agreement is evidenced in writing and these Terms and Conditions are strictly complied with.
- 4.4 Any forbearance by the Company in continuing to allow discounts in the event of breach by the Customer of any of these Terms and Conditions shall not be deemed to be a waiver of the Company's rights and the Company shall be entitled to claim the undiscounted price of all Products supplied under the Contract.

5. TITLE

- 5.1 Title in the Products shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any account.
- 5.2 Until title passes to the Customer, the Customer shall hold the Products on a fiduciary basis as the Company's bailee, store the Products separately from all other products in such a way that they are clearly identifiable as the property of the Company; maintain the Products in a satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.
- 5.3 In the event of non-payment on the due date for whatever reason of any sums due from the Customer to the Company,

or in the event that any of the forms of insolvency detailed in Condition 12 commences against the Customer, the Company, its agents and employees shall have the right, without giving notice and without incurring liability, to enter into the Customer's premises and to take possession of the Products to which title has not passed. This right shall be without prejudice to any other legal rights or remedies available to the Company.

6. RISK

The risk of loss or damage to the Products shall pass to the Customer upon delivery to the Customer's premises and, subject to Condition 8.2, signature of a delivery note for the Products by a responsible person on behalf of the Customer provided that the Company shall not be responsible for any loss or damage to the Products sustained whilst on the delivery premises but before signature of the delivery note if such loss or damage arises as a consequence of the condition of the delivery premises or the act, default or omission of the Customer or its representative.

7. SETTLEMENT TERMS

- 7.1 Where credit is granted, unless otherwise agreed in writing all sums payable in respect of Food and Non-Food must be paid without deductions within 14 days from the end of the calendar month in which the invoice was raised.
- 7.2 Where credit is granted, unless otherwise agreed in writing all sums payable in respect of Equipment supplied by Brake Bros Foodservice Ltd (trading as Country Choice Foods) must be paid without deductions within 14 days from the end of the calendar month in which the invoice was raised and in respect of Equipment supplied by Brakes Catering Equipment without deductions within 28 days from the end of the month in which the invoice was raised.
- 7.3 Failure to pay by the due date shall entitle the Company to suspend delivery of all unexecuted orders. The time for payment of the price of the Products shall be of the essence.
- 7.4 The Company reserves the right at any time in its absolute discretion to demand immediate payment of any account whether due or not and to take legal action to recover the debt and costs.
- 7.5 If payment is not made in accordance with this Condition, the Company reserves the right to charge Statutory Interest on the overdue balances for the period from the date on which payment became due until the date on which payment is made including any period after the date of any judgement or decree against the Customer. In addition each overdue invoice will attract a late payment compensation fee of £40.
- 7.6 In the event of any cheques, standing orders or direct debits due from a Customer to the Company being dishonoured, a charge of £45 (or such other sum as the Company may from time to time advise the Customer) will be made on the Customer's account to cover bank and administrative costs.
- 7.7 The Company reserves the right in its absolute discretion to refuse to grant credit.

8. DELIVERY AND DELAY

- 8.1 Deliveries of Products to the Customer shall be in accordance with the Company's delivery schedule. The Company shall not be liable for any loss or damage whatsoever arising as a result of failure to deliver Products by a particular date or arising as a result of any cause beyond the Company's control. Time for delivery shall not be of the essence unless otherwise agreed by the Company in writing.
- 8.2 Delivery of Products shall be made by the Company to such reasonably accessible premises as the Customer shall reasonably require. The Customer shall allow the Company reasonable access to such premises and shall use best endeavours to ensure that a responsible person shall be at the place of delivery to take delivery of the Products and to sign for them. In the event of no such person being present at the time of delivery the Customer hereby consents to the Company leaving the Products at what appear to be the premises nominated by the Customer as the place of delivery and when the Products are so left risk in the Products shall pass to the Customer and no liability shall remain with the Company in respect of the Products.
- 8.3 If the Customer fails to take delivery or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may do one or more of the following:
 - 8.3.1 charge the Customer the cost of carriage of the refused delivery both to and from the premises of the Customer in addition to the Company's

administration charges involved;
8.3.2 charge the Customer the full cost price of the Products and a sum in respect of its loss of profit provided that the Company shall use its reasonable endeavours to mitigate such loss;
8.3.3 where the delivery includes Equipment store the Equipment until actual delivery and charge the Customer for the reasonable (including insurance) of storage;
8.3.4 sell the Equipment at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract.

9. ACCEPTANCE AND CLAIMS PROCEDURE

- 9.1 The Customer must check that the quantity and specifications of Products delivered correspond with the Contract before signature of the delivery note.
- 9.2 Claims in respect of short deliveries or damage to Products reasonably visible on inspection must be made to the Company within 24 hours of the time of the delivery which gives rise to the claim. The Customer must retain damaged Products for inspection and collection. Credit will only be granted by the Company if the provisions of this Condition are complied with.

10. ERECTION AND INSTALLATION

Where erection, installation and positioning of Equipment are part of the Contract the Customer shall ensure that the site is clear and ready for installation. Should the site not be ready as stipulated for such installation, the Company reserves the right to make a charge for any costs incurred as a result of it being so prevented and any delay or subsequent installation.

11. CANCELLATION OF CONTRACT

The Contract may not be cancelled by the Customer without the written consent of the Company. The Company reserves the right upon consent being given to levy a cancellation charge of not less than 20% of the standard list price of the Products which are the subject of the Contract to cover the Company's losses arising from the cancellation. Non-stock Products ordered on behalf of the Customer cannot be returned, unless the manufacturer agrees to accept them.

12. INSOLVENCY OF CUSTOMER

- 12.1 In the event that:
 - 12.1.1 the Customer makes any voluntary arrangement with its creditors, proposes to enter into a company voluntary arrangement, enters into administration, is unable to pay its debts as they fall due, makes application to a Court to suspend enforcement action against it, goes into liquidation (in the event that the Customer is a company) or becomes insolvent, enters into a trust deed or voluntary arrangement for the benefit of its creditors (in the event that the Customer is an individual or firm), or if the equivalent occurs under any jurisdiction; or
 - 12.1.2 an encumbrancer takes possession of, or a receiver or administrative receiver is appointed over, any of the property or assets of the Customer; or
 - 12.1.3 the Customer suspends any payments hereunder or ceases, or threatens to cease, to carry on business; or
 - 12.1.4 the Company reasonably considers that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;then without prejudice to any other rights or remedies available to the Company, the Company shall be entitled forthwith to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Products have been delivered but not paid for, the price shall become immediately payable notwithstanding any previous agreement to the contrary.

13. WARRANTIES

- 13.1 The Company warrants that all Food Products (with the exception of Customer Nominated Products in respect of which the Company's complete responsibility is set out in Condition 16) shall comply with the Food Safety Act 1990 and all relevant UK legislation from time to time in force. The Company warrants that all Non-Food Products (with the exception of Customer Nominated Products in respect of which the Company's complete responsibility is set out in Condition 16) shall comply with all relevant UK legislation from time to time in force.
- 13.2 The Company gives no warranties in respect of the Equipment. The Company will to the extent that it is able at the sole cost and expense of the Customer assign or make available to the Customer the benefit of any warranties or guarantees relating to the Equipment obtained from the manufacturer thereof.

14. LIMITATION OF THE COMPANY'S LIABILITY

- 14.1 The Company limits its liability to the maximum extent permitted by law as follows:

14.1.1 in respect of Food Products, the Company's liability shall be limited to Food Products consumed up to and including the "Best before" or "Use by" date;

14.1.2 the Company's liability shall be limited at its option to replacing the whole or any part of any Products found to be damaged or otherwise defective or refunding or crediting the purchase price or a pro rata portion of the purchase price of the Products of which the defective Products form part; and

14.1.3 the Company's liability in respect of death or personal injury caused by the Customer's negligence shall not be limited.

- 14.2 The Company shall have no liability for any loss or damage suffered by the Customer or any other person:

14.2.1 as a consequence of any defect in any Product caused by abnormal conditions of storage, treatment or handling or any negligence or wrongful act on the part of the Customer or its employees or agents;

14.2.2 for claims for damage reasonably apparent on inspection at the time of delivery or for short delivery unless the provisions of Condition 9 (Acceptance and Claims Procedure) have been complied with;

14.2.3 for any claim arising on an invoice issued more than 3 months before the date upon which such claim is received by the Company;

14.2.4 for any loss of profit, loss of sale, loss of goodwill, loss of reputation, loss of customers and any other similar losses caused by the Company's negligence or other wrongful act on the Company's part or that of its employees or agents;

14.2.5 for any failure by the Company to perform any of its obligations in these Terms and Conditions caused by circumstances beyond its reasonable control.

15. INTELLECTUAL PROPERTY

Copyright and all other intellectual property rights in the Products shown in the Company's lists shall remain at all times the property of the Company. The Customer shall acquire no rights in the Products except as expressly provided for in these Terms and Conditions.

16. CUSTOMER NOMINATED PRODUCTS

In the event that any of the Products to be supplied under the Contract are Customer Nominated Products the following provisions shall apply:

- 16.1 The Customer shall be responsible for agreeing directly with the suppliers of Customer Nominated Products all matters concerning Customer Nominated Products including the specification and delivery conditions. The Company shall have no responsibility for the selection of any supplier of Customer Nominated Products or for their performance. The Customer shall provide the Company with full details of all suppliers of Customer Nominated Products in order for the Company to fulfil its obligations under the Contract.
- 16.2 The Company shall purchase Customer Nominated Products from suppliers at the price agreed with the suppliers by the Customer. The Customer shall provide the Company with a price file for each supplier of a Customer Nominated Product showing the relevant cost.
- 16.3 Unless otherwise agreed, the Company shall arrange for Customer Nominated Products to be delivered into its depots for onward delivery by the Company to the Customer. Upon delivery of Customer Nominated Products into its depots the Company shall check such Products for obvious external damage and shall reject any such Products which are clearly damaged. The Company shall not be obliged to carry out any other checks or quality control inspections in relation to Customer Nominated Products and Customer Nominated Products are sold by the Company to the Customer on this basis.

16.4 The Customer acknowledges and agrees that the inability of the Company to perform any part of the Contract by reason of the performance deficiencies of any or all of the suppliers of Customer Nominated Products shall not be deemed to be a material breach of the Contract by the Company and to the extent that it is able according to law the Customer will pursue its remedies directly against the defaulting supplier of the Customer Nominated Product. The Customer's remedies against the Company in such circumstances shall in any event be limited to the remedies which the Company reasonably has against the defaulting supplier of the Customer Nominated Product.

- 16.5 The Customer acknowledges and agrees that the inability of the Company to perform any part of the Contract by reason of the performance deficiencies of any or all of the suppliers of Customer Nominated Products shall not be deemed to be a material breach of the Contract by the Company and to the extent that it is able according to law the Customer will pursue its remedies directly against the defaulting supplier of the Customer Nominated Product. The Customer's remedies against the Company in such circumstances shall in any event be limited to the remedies which the Company reasonably has against the defaulting supplier of the Customer Nominated Product.

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to circumstances beyond its reasonable control including without limitation any failure or delay on the part of the manufacturer of any of the Products to supply the Products to the Company, any strike, lock-out or other industrial action, fire, explosion, flood, closure of motorways or other roads leaving no alternative route, unusually severe weather conditions or unusually severe traffic congestion which could not reasonably have been anticipated leaving no alternative route, loss of power or telecommunications systems or computer failure or breakdown.

18. ADDITIONAL TERMS

18.1 Failure or delay on the part of the Company in enforcing any provision of the Contract shall not be construed as a waiver of any of the Company's rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

18.2 If any provision of the Contract is found by any Court, tribunal or other administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.3 The Company, but not the Customer, may assign its rights and obligations under the Contract.

18.4 Any written communication given pursuant to the Contract must be sent by pre-paid first class post to the registered office of the addressee or such other address as may have been notified in writing and shall be deemed to have been received by the addressee two days after the date of posting.

18.5 The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

18.6 The Contract shall be governed by the laws of England and the Company and the Customer agree to submit to the non-exclusive jurisdiction of the English Courts.

18.7 If the Customer is a partnership the liability of the individual partners to the Company shall be joint and several.

18.8 The signature on behalf of a Customer who is a limited company by any person purporting to sign with the Customer's authority shall bind the Customer and the Customer shall be liable to comply with the terms of the Contract.

18.9 The Customer shall be liable to comply with the terms of the Contract and pay for any Products which are ordered using its Customer account number.

18.10 The Company reserves the right to amend these Terms and Conditions from time to time on giving not less than 7 days prior notice to the Customer.