

## Standard Terms & Conditions

### Kirby & West 2023 Ltd Trading Terms

"We," "us," "our" mean Kirby & West 2023 Ltd (t/a Kirby and West) a company registered in England and Wales, company number 14637570, whose registered office is at Ash House Breckenwood Road, Fulbourn, Cambridge, CB21 5DQ.

"You," "Your" means our customer placing the order with us.

#### Opening your account

**1. Your account:** Before you can place any orders with us, you will need to have a trading account with us.

#### Contract

**2. Contract:** The contract between you and us will be made only when we confirm to you that your order has been accepted by us. The contract is intended to benefit you and us only and will be on these terms alone. Each order accepted by us will form a separate contract governed by these trading terms.

#### Changes

**3. Changes:** We may change these trading terms at any time. Any such changes will take effect when published but will not affect any of your orders that we have accepted before such publication. It is your responsibility to check for the up to date trading terms.

#### Pricing

**4. Price:** Prices are fixed on the day of delivery, not when your order is accepted. VAT will be charged at the applicable rate. You agree to keep confidential any specific pricing known to you by us.

**5.** We may adjust any advertised price at any time including in the event of 'Exceptional Market Forces'. 'Exceptional Market Forces' include any event that is beyond our reasonable control that leads to an increase in the price generally of the goods and services contemplated by this agreement, such as (but not limited to) changes in laws, regulations, acts of government or local government, changes in taxation, tariffs and/or subsidies; adverse exchange rates; rise in energy and/or fuel cost, adverse weather; crop failure and /or the lack of availability of product.

**6. Errors:** We strive to ensure that all advertised pricing is accurate. Errors, however, may occur. If we discover an error in the price of goods you have ordered we will inform you as soon as possible and give you the option of re-confirming your order at the correct price or cancelling it. If we are unable to contact you we will treat the order as cancelled. If you cancel and you have already paid for the goods, you will receive a full refund.

#### Placing your order

**7. Orders:** Orders are accepted subject to availability of the product from the manufacturer. Whilst we make every effort to ensure that pack sizes shown are accurate, manufacturers may change their pack sizes. If there is a change to the size shown, we would supply the actual pack size at its price.

**8. Promotions:** To take advantage of any promotion, your delivery date must be between the advertised effective dates of the promotion.

Please note: any rebates/discounts shall not apply to products on promotion. Individual promotions may not be combined with each other or with other discount offers.

**9. Minimum order value:** A minimum value of £50 (net) is required for each delivery, which may be made up of any mix of products. Orders below £175 (net) may not be accepted or, if accepted, may be subject to a surcharge.

**10. Splitting Charges:** If you wish we are able to split original cases. In some instances a minimum split quantity may apply and we may make an additional charge for split cases.

**11. Last Orders:** Unless we advise otherwise, your order must be received for next day deliveries before 2.00p.m. on the day prior to delivery.

#### Delivering your order

**12. Delivery:** Delivery will be to the address that you give to us when you register for your trading account. We will make the delivery only to an adult (18 years of age or over). The delivery date and time which we arrange with you are approximate only and other than as is set out at 23 below, we will not be liable for any cancelled or delayed delivery. You must ensure that there is an adult at the delivery address to sign for the delivery during the agreed date and time.

**13. Unattended deliveries** – if we agree to an unattended ('drop & go') delivery, the following shall apply: (i) you must provide a secure and suitable delivery area (and safe access to such area) for the products to be delivered; (ii) our drivers will deliver to such secure service delivery area provided that no delivery point compromises any health and safety requirements or the safety and security of our driver; (iii) our electronic delivery notification (photograph of the goods delivered and GPS location) shall be sufficient proof of the delivery. For frozen/chilled products a photograph of the vehicle temperature gauge and/or print out the temperature shall be sufficient proof of the product temperature range at the time of delivery; (iv) you must notify us of any shortage in and/or damaged products in an unattended delivery on the day of delivery itself. We will not process a claim for credit for a shortage in and/or damage to the items delivered if such claim is not made on the day of delivery.

**14. Risk/Ownership:** All risks in the goods will pass to you on delivery. Ownership of the goods delivered will remain with us until our receipt of full payment from you of all sums outstanding to us. If there occurs any event of insolvency with respect to you or your business, we shall have an immediate right to possess the goods to which we have title.

**15. Shortages:** Please check your delivery with our driver as claims for shortages must be made at the time of delivery.

**16. Returns:** Damaged goods with the proof of delivery may be returned for full credit. For chilled goods this must be done at the time of delivery only and for all other goods on the day of delivery.

**17. Cages/Pallets:** Roll cages, pallets and tote boxes remain our property at all times. We may charge for any items left at your premises at your request which are not returned or are lost.

#### Payment/Refunds

**18. Paying credit accounts:** Payment terms are subject to credit checks satisfactory to us. Your account must be settled by the 16th of the month following invoice date (or such other date as may be agreed by us in writing). 'Settled' means our receipt of cleared funds. If your account is in arrears, we may withhold further supplies.

**19.** We may suspend supply and/or withdraw and/or change your payment terms: (a) immediately if you suffer any insolvency event; (b) on giving 7 days' notice to you if there is an adverse change in your credit rating; (c) if credit insurance held by us in respect of your account with us is reduced, withdrawn or ceases to be available at reasonable commercial rates.

**20. Refunds:** If you have paid for goods in advance using a credit/debit card (and a refund is agreed with us), your refund will be the credit/debit card account used.

#### Our commitment

**21. Warranties:** All goods offered for sale are warranted (a) to be of the nature, substance and quality described and (b) to comply with all statutory requirements from time to time in force relating to the sale of food (so far as applicable to such goods).

**22. Durability:** Most food product with a life from manufacture of 12 months or less must by law be dated either by 'Best Before' or a Use By Statement'. We endeavour to ensure that all dated stock has an optimum remaining life when we sell it to you. Please check the durability dates at time delivery as we are unable to accept returned products relating to date coding after the time of delivery.

#### Our liability

**23.** We accept unlimited liability for personal injury or death arising from our negligence and for all other matters for which it is unlawful for us to limit our liability under English law. We will not be liable to you whether in contract, tort (including negligence) or breach of statutory duty for any: (a) loss of profit, loss of business or business opportunity, loss of contract, loss of goodwill, management time; or (b) any special, indirect or consequential loss. Other than this, our liability arising out of any order by you for the supply of goods to you will be limited to the price of the goods in that order.

**24.** We do not accept liability for any failure to perform, or delay in performance, caused by events outside of our reasonable control (such as strikes, trade disputes, accident, breakdowns or shortages affecting us or our usual sources of supply or our means of delivery of the goods).

#### Intellectual property

**25.** Copyright and all other intellectual property rights in all materials shown in our lists and/or on our website (including in any images or product data and/or pricing) shall remain at all times our property and you will not acquire any rights to such materials or be entitled to use them except as is expressly provided in these trading terms.

#### Law

**26.** The contract and any claims arising in connection with it shall be governed by English law and any dispute between us will be resolved in the English courts.

#### Privacy

**27.** We may for the purposes of our business of foodservice, collect and store the names, contact details and other relevant information about your personnel within your organisation. Please refer to our Privacy Policy which applies to our storage and use of such information.

#### Telephone call monitoring

**28.** We may listen to your call for record keeping and to assist with ongoing training and development of our staff with the aim of giving you the best possible service.

Please note

- Photographs are for illustration purposes only.

- Always refer to the product packaging for information on its contents. We do not warrant information provided by third party manufacturers. If you require further details please contact us on 0116 222 0000.