

# DAIRY CREST LIMITED – STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Buyer:** the person or firm who purchases the Goods from Seller.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

**Contract:** the contract between Seller and Buyer for the sale and purchase of Goods in accordance with these Conditions.

**Goods:** the goods (or any part of them) set out in the Order.

**Group:** Dairy Crest Group plc and any holding company or subsidiary of Dairy Crest Group plc and any subsidiary of any such holding company, as defined in section 1159 of the Companies Act 2006.

**Order:** Buyer's order for the Goods, as set out in Buyer's purchase order form or Seller's written quotation, as the case may be.

**Seller:** Dairy Crest Limited (registered in England and Wales with company number 02085882) or, if different, the member of the Group which has entered into the contract with Buyer.

**Specification:** any specification for the Goods that is supplied to Buyer by Seller, or produced by Buyer and agreed in writing by Seller.

1.2 Any reference in these Conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings of these Conditions are for convenience only and shall not affect their interpretation.

## 2. BASIS OF CONTRACT

2.1 These Conditions apply to each Order, and each Order will constitute a discrete Contract, to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing (save that these Conditions will not override any written negotiated contract of a defined term entered into between the parties relating to specific goods and which has been signed by an authorised signatory of each of the parties).

2.2 The Order constitutes an offer by Seller to sell or an offer by Buyer to purchase the Goods in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of (a) Seller issuing a written acceptance of the Order; and (b) Seller doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

## 3. DELIVERY

3.1 Delivery of Goods shall be made by Seller delivering Goods to the place specified in the Order, or, if Buyer collects the Goods, at the date of collection, whichever is earlier.

3.2 Seller may deliver or make available the Goods by separate instalments. Where this is the case, each instalment shall be deemed to be a separate Contract and no cancellation of any one Contract relating to an instalment shall entitle Buyer to repudiate or cancel any other Contract or instalment.

3.3 Any dates quoted for delivery of the Goods are approximate only and time for delivery shall not be of the essence unless previously agreed by Seller in writing. Seller shall not be liable for any delay in delivery of the Goods howsoever caused and, subject to the other provisions of these Conditions, Seller accepts no liability for any loss of income or revenue, loss of business, loss of profits or contracts, loss of anticipated savings, loss of data, waste of management or office time or for any indirect or consequential loss or damage of any kind however arising caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Seller's negligence). The Goods may be delivered by Seller in advance of the quoted delivery date upon giving reasonable notice to Buyer. Delay in delivery shall not entitle the Buyer to terminate or rescind the Contract unless (subject always to Condition 12) such delay exceeds thirty (30) days.

3.4 If Seller fails to deliver the Goods, its liability shall be limited to the cost and expense incurred by Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of Goods.

3.5 If for any reason Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or Seller is unable to deliver the Goods on time because Buyer has not provided appropriate instructions, documents, licenses or authorisations, Seller may store the Goods at Buyer's risk until actual delivery, whereupon Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

## 4. RISK AND PROPERTY

4.1 Risk of damage to or loss of the Goods shall pass to Buyer: (a) in the case of Goods to be collected from Seller's premises, at the time when Seller notifies Buyer that the Goods are available for collection; or (b) in the case of Goods to be delivered to Buyer's premises, at the time of delivery; or (c) if Buyer wrongfully fails to take delivery of the Goods, at the time when Seller has tendered delivery of the Goods.

4.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to Buyer until Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Seller to Buyer for which payment is then due.

4.3 Until such times as the property in the Goods passes to Buyer, Buyer shall hold the Goods as Seller's agent and shall keep the Goods separate from those of Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured, and identified as Seller's property. Until that time Buyer shall be entitled to re-sell or use the Goods in the ordinary course of its business (acting always on its own account as principal in any such re-sale) but shall account to Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible, including insurance proceeds, and shall keep all proceeds separate from any monies or property of Buyer and third parties, and in the case of tangible proceeds, properly stored, protected and insured.

4.4 Until such time as the property in the Goods passes to Buyer Seller shall be entitled at any time to require Buyer to deliver up the Goods to Seller and if Buyer fails to do so forthwith to enter upon any premises of Buyer or any third party where the Goods are stored and re-possess the Goods.

## 5. CANCELLATION

Orders may only be cancelled by Buyer on written notice and on payment to Seller of cancellation charges which take into account expenses incurred and commitments already made by Seller as a consequence of Buyer having placed its Order.

## 6. WARRANTY AND LIABILITY

6.1 Seller warrants that the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and shall at the time of delivery correspond with the Specification and comply with all applicable statutes and regulations relating to food supplies of the relevant kind and if packaged then the Goods shall comply with all applicable UK statutory labelling requirements. All other conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods are excluded to the fullest extent permitted by law.

6.2 Seller's only obligation in relation to defective Goods shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace any Goods found to be damaged or defective and/or to refund the cost of such Goods to Buyer.

6.3 Seller shall not be liable to Buyer in respect of any Goods which have been altered, used, or sold on by Buyer or in which a defect has arisen as a result of a failure by Buyer to follow Seller's oral or written instructions as to the storage or use of the Goods or good trade practice.

6.4 Seller shall not be liable to Buyer for the unsuitability of the Goods for mixing with other goods or substances unless Buyer has made full disclosure of all material facts and in particular (but not limited to) standards, requirements, ingredients and specifications with which the Goods should conform.

6.5 Seller's aggregate liability to Buyer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the price paid by Buyer for the Goods in respect of any occurrence or series of occurrences.

6.6 Seller shall not be liable to Buyer for any indirect or consequential loss or damage (whether for loss of profit or contracts, income or revenue, business, goodwill or any other economic loss including physical damage or otherwise), costs or expenses suffered by Buyer, howsoever caused.

6.7 Nothing in these Conditions shall exclude or limit Buyer's duty to mitigate its loss or exclude or limit Seller's liability (a) for death or personal injury caused by Seller's negligence, (b) for fraud or fraudulent misrepresentation, (c) under section 2(3) of the Consumer Protection Act 1987 or (d) for any matter for which it would be illegal for Seller to exclude its liability.

## 7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price agreed by Seller and Buyer, or in the absence of any agreement, the price set out in Seller's published price list in force as at the date the Contract came into existence. All prices are expressed exclusive of VAT (which will be due and payable by the Buyer in addition).

7.2 Seller may invoice Buyer for the price of the Goods on or at any time after delivery of the Goods. Buyer shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by Seller. Any credit note issued by Seller shall quote the relevant Order purchase number, invoice number and Seller's depot (if applicable).

7.3 Seller shall have the right at any time to withdraw any discount from its normal prices and to revise prices to take account of inflation and/or increases in costs including (without limitation) costs of any Goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or other levy and any variation in exchange rates.

7.4 If Seller agrees to deliver the Goods other than at the Buyer's premises, Buyer will reimburse Seller on demand for any and all transportation, insurance and delivery costs incurred by Seller in delivering the Goods to Buyer.

7.5 If Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to Seller, Seller may (a) cancel the Contract and/or suspend any further deliveries to Buyer; and/or (b) charge interest to Buyer on the overdue amount at the rate of 2% per annum above the base rate of Royal Bank of Scotland from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Buyer shall pay the interest together with the overdue amount. This clause shall not apply to payments Buyer disputes in good faith.

7.6 Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless Buyer has a valid court order requiring an amount equal to such deduction to be paid by Seller to Buyer.

7.7 Seller may, without limiting any other rights or remedies it may have, set off any amount owed to it or Group by Buyer against any amounts payable by it or Group to Buyer under the Contract or any other contract in force between the parties.

## 8. PALLETS, CRATES, PACKAGES, CONTAINERS AND BOTTLES

Unless otherwise specified all pallets, crates, packages, containers and bottles remain the property of Seller and are returnable to Seller in the same state and condition in which they were delivered at the cost of Buyer. Seller reserves the right to charge Buyer for pallets, crates, packages, containers and bottles which have not been returned to Seller or which have been returned and are not in the opinion of Seller in a fit state or condition for re-use by Seller. None of the said pallets, crates, packages, containers or bottles shall be used by Buyer before their return to Seller.

## 9. AVAILABILITY OF MILK

Without prejudice to the provisions of Condition 12 if the supply of Goods by Seller is subject to the availability of milk, Seller shall not be in any way liable

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or responsible in the event that it is unable due to the non-availability of milk to deliver the Goods to Buyer.

will be governed by the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

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## 10. CONFIDENTIAL INFORMATION

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

## 11. TERMINATION

11.1 Seller may terminate the Contract with immediate effect by giving written notice to Buyer if Buyer becomes subject to any of the following events: (a) Buyer (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), (b) enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), (c) passes a resolution for its winding up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt whether in this jurisdiction or elsewhere, (d) ceases or suspends or threatens to cease or suspend all or substantially the whole of its business, (e) where Buyer is a partnership, other corporate entity or individual, a similar act or event to any of the foregoing occurs (including without limitation, the appointment of a Judicial Factor or Trustee in Bankruptcy) or (f) anything analogous to the foregoing under the laws of any jurisdiction occurs in relation to Buyer; or there is a change of control of Buyer; or Buyer materially breaches or commits persistent breaches of any of the terms of the Contract.

## 12. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that both parties shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent either party from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, either party may terminate this Contract immediately by giving written notice to the other party.

## 13. GENERAL

13.1 **Assignment and subcontracting.** Seller may assign, novate, transfer, charge, delegate, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. Buyer may not assign, novate, transfer, charge, delegate, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without Seller's prior written consent.

13.2 **Notices.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to the Company Secretary of that party at its registered office (if it is a company) or its principal place of business (in any other case) or at the address specified for that party in the Order, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the relevant address for that party; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 **Severance.** If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.4 **Third party rights.** If the Buyer uses or sells the Goods in such manner as to infringe any rights of a third party the Seller shall not be responsible for such infringement nor for any alleged infringement arising from the Buyer's action in relation to the Goods and the Buyer hereby agrees to indemnify the Seller for and against all liability arising therefrom. The Buyer shall not make any representations, warranties or guarantees with reference to Goods supplied by the Seller except such as are consistent with these Conditions. Neither the Seller nor Buyer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.5 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy or any single or partial exercise of such right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

13.6 **Variation.** Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Seller.

13.7 **Governing law and jurisdiction.** The Contract, and all non-contractual disputes or claims between the parties relating to the subject matter hereof,