

1. OVERRIDING PROVISIONS

- 1.1. Unless otherwise agreed in writing all Orders are accepted and all Goods sold subject to and upon these Terms and Conditions, which the Customer shall be deemed to have adopted as the Customer's standard terms of business in relation to all present and future dealings between the parties to the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.2. Any variations to the Contract shall only be binding when agreed in writing and signed by the parties.
- 1.3. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms and Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate. The Order shall only be deemed to be accepted when the Company confirms acceptance of the Order or delivers the Goods (whichever is earlier), at which point the Contract shall come into existence.

2. PRICES

- 2.1. Unless otherwise agreed, all prices charged for Goods will be in accordance with the Company's standard list prices as at the date of despatch of the Goods to the Customer.
- 2.2. All prices quoted and charged are exclusive of VAT (which will be added thereto) and are subject to alteration without notice.
- 2.3. The Company reserves the right to charge for packaging, insurance and transport of the Goods.
- 2.4. Where the Company has quoted otherwise than by reference to its standard list prices it reserves the right to adjust such quoted prices to take account of addition to, or increases in taxes and duties, the cost of labour, materials, manufacture, transport and ancillary charges occurring between the date of the quotation and the date upon which the Goods are despatched.
- 2.5. The Company may invoice the Customer for the Goods on or at any time after delivery.

3. DELIVERY

- 3.1. Unless otherwise agreed, each delivery of Goods shall take place at the Customer's premises unless otherwise agreed in writing between the parties. If the Company agrees that the Customer may collect the Goods from the Company's premises, delivery shall take place on collection. Delivery to a carrier arranged by the Customer shall be deemed delivery to the Customer. Each delivery shall be accompanied by a delivery note.
- 3.2. Delivery notes must be checked and where possible signed by the Customer at the time of delivery.
- 3.3. Any delivery date or time quoted by the Company is an estimated date or time only and time for delivery shall not be of the essence. The Company shall not be liable for any loss or damage incurred by the Customer through any failure or inability on the Company's part to meet such date or time where this is due to an event set out in Condition 7.4 or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4. If the Company fails to deliver the Goods within 2 days of the agreed delivery time, its liability shall be limited to the costs and

expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure where this is due to an event set out in condition 7.4 or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 3.5. Delivery of invoices will be deemed proof of delivery of all Goods specified therein unless the Customer informs the Company of non-delivery or shortages in writing within seven days of delivery.
- 3.6. Without prejudice to any other right or remedy of the Company, the Company reserves the right to suspend delivery of the Goods to the Customer if the Customer has failed to pay any amount owed by it to the Company in accordance with conditions 5 and 6 or if in the Company's opinion the Customer will not be able to meet any existing or future commitment to the Company.

4. TITLE AND RISK

- 4.1. All Goods supplied shall remain the Company's property as long as any monies are owed to it by the Customer (and whether under the Order giving rise to non-payment or any other Order by the Customer or Contract between the parties) but the risk therein shall pass to the Customer on delivery (as set out in condition 3.1 above).
- 4.2. Notwithstanding condition 4.1 above, the Customer shall be entitled to use in the ordinary course of business or to re-sell (at their full market value) Goods which are the property of the Company provided that where such Goods are re-sold the Customer shall between himself and the Company act as agent of the Company and shall hold on behalf of the Company but at the Company's expense claims for the proceeds of their sale equal to the price of the Goods supplied by the Company.
- 4.3. The Customer shall if requested by the Company store the Goods of the Company or the proceeds of their sale separately and identifiably and so long as the property in the Goods or proceeds remain with the Company yield them up on request.
- 4.4. If for any reason the Company has the right to repossess Goods on the premises of the Customer then the Customer shall be deemed to have irrevocably authorised the Company to enter his premises for the purpose of retaking possession of such Goods.
- 4.5. Notwithstanding the provisions of The Sale of Goods Act 1979 all glass milk bottles and all crates, pallets and cages remain the Company's property and title shall not pass to the Customer. All glass milk bottles and all crates, pallets and cages and other Company property shall be returned to the Company immediately after use or upon request.
- 4.6. Without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries to the Customer under any Contract without incurring any liability to the Customer on the occurrence of any of the following events (or where the Company reasonably believes any of the following events are about to occur), and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due and payable: (a) the Customer suspends payment of its debts, or is deemed unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986, or being a partnership has any partner who is deemed unable to pay his debts within the meaning set out in the Insolvency Act 1986, (b) the Customer commences negotiations

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with any class of its creditors with a view to rescheduling any of its debts, or enters into any arrangements with its creditors other than for the purpose of the solvent restructure of the Customer, (c) the Customer is the subject of a bankruptcy petition or order, (d) a creditor of the Customer shall take possession of, or a distress or execution shall be levied on the Customer's assets, (e) an application is made to court, or an order is made for the appointment of an administrator over the Customer, or an administrator is appointed over the Customer or notice is given of the same, (f) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver, (g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer, (h) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or substantially the whole of its business, (i) the Customer dies or by reason of illness or incapacity (physical or mental), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation, (j) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect similar to any of the events mentioned in (a) to (i) above.

5. PAYMENT FOR GOODS

All Goods purchased by the Customer must be paid for in cash at the time of delivery unless the Company has approved the Customer's credit facilities (as set out in condition 6 below) or the Company has otherwise agreed. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

6. APPROVED CREDIT FACILITIES

- 6.1. Unless alternative terms for settlement have been agreed in writing between the Company and the Customer, approved credit accounts are due for settlement in full at the Company's depot within seven days following the date of each invoice.
- 6.2. The Company reserves the right to charge interest at the rate of 8% per annum above the sterling base lending rate of the Bank of England calculated weekly on invoices which shall remain unpaid for 14 days from the date on which they were first due for payment. Interest at the above specified rate shall be chargeable from the date of issue of the said invoice until paid in full. Where applicable, interest shall continue to be chargeable at the above specified rate after the date of obtaining judgement against the Customer.
- 6.3. The Company reserves the right to withdraw "Approved Credit Facilities" from the Customer on failure by the Customer to make settlement in full of any outstanding invoice on the due date for payment or, in the Company's opinion, the Customer will not be able to meet any existing or future commitments to the Company.
- 6.4. Notwithstanding anything in these Terms and Conditions expressed or implied to the contrary in the event of the Customer ceasing to take supplies from the Company (for whatever reason) or the Company ceasing to deliver supplies to the Customer (for whatever reason) then in such circumstances all sums invoiced shall fall due for immediate repayment.

7. WARRANTY AND LIABILITY

- 7.1. With the exception of those Goods which are not of the Company's own manufacture, the Company warrants that the Goods shall: (a) conform in all material respects with their description; (b) be free from material defects in design, material and workmanship; and (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979. Where the Goods supplied are not the Company's own manufacture, the Company will use all reasonable endeavours to pass on to the Customer the benefit of any warranty given by the supplier of such Goods to the Company.
- 7.2. If the Company receives notice that any of the Goods supplied were defective and, upon its being given reasonable opportunity to inspect the same (if requested), the Company reasonably determines the defect arises from faulty materials or workmanship in manufacture, the Company will at its sole discretion either replace the defective item free of charge or provide the Customer with credit to the value of the defective goods, provided that the Customer promptly notifies the Company of any alleged defect (which shall in any event be within 7 days from the date of delivery or (where any defect was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect). The Company reserves the right to make a charge for delivery depending on the circumstances. The warranty does not apply and the Company shall not be liable in the event that the defect is caused or contributed by abuse, improper application of the Goods by the Customer or following delivery of the Goods to the Customer, or where the Goods have been damaged by accident or negligence in use, storage or transportation. The Customer will in accordance with the Company's instructions, or with the Company's consent, dispose of the defective Goods, return them to the Company or retain any defective Goods at its premises until instructed by the Company to return them. Except as provided in this condition 7.2, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in these Terms and Conditions.
- 7.3. The Company's total liability to the Customer whether in contract, tort or otherwise in respect of all losses arising under or in connection with the Contract, however arising, shall not exceed 110% of the price of the Goods under the Contract. Nothing in these Terms and Conditions shall limit or exclude the Company's liability where it is prohibited by law from doing so (including liability for death or personal injury caused by its negligence and for fraud or fraudulent misrepresentation).
- 7.4. Notwithstanding anything in these Terms and Conditions expressed or implied to the contrary the Company shall not be liable in respect of any shortage or failure to supply Goods where such shortage or failure is due to an Act of God, epidemic, floods, fires, extreme adverse weather conditions, war, terrorism, riot, civil commotion, strikes, lock outs, stoppages or restraints, failure of energy sources or transport network or withdrawal of labour for whatever cause whether partial or general (whether involving its own workforce or a third party's) and the Company shall not, in any circumstances, be liable in respect of any indirect or consequential loss to the Customer including but not limited to loss of profits.

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8. REPRESENTATIONS TO THIRD PARTIES

The Customer shall not make any representations, warranties or guarantees with reference to the Goods supplied by the Company except such as are consistent with these Terms and Conditions.

9. STORAGE AND SHELF LIFE

Suitable storage conditions and proper stock rotation should be observed by the Customer in the case of all Goods supplied by the Company and Goods should not be released for sale or distribution where by reason of their age or having regard to the time normally taken in the progress of such Goods along the distribution chain they could not reasonably be expected to reach the ultimate consumer in a fresh and wholesome state prior to the expiry of their recommended shelf life, or where such sale or distribution would be prohibited by health and safety legislation. The Customer shall indemnify the Company against any loss, claim or damage it incurs as a result of the Customer's breach of this condition 9.

10. RECEIPTS AND RE-PRESENTATION OF CHEQUES

- 10.1. Where payment by a Customer is made by cheque or traders credit a receipt will not be issued unless specifically requested.
- 10.2. The Company reserves the right to charge the Customer for any charges incurred by the Company if obliged to re-present any cheque tendered by a Customer in payment.

11. MISCELLANEOUS

- 11.1. Any indulgence granted by the Company to the Customer or any waiver by the Company of its rights under these Terms and Conditions in respect of any particular Contract or series of Contracts shall not be deemed an agreement to confer the same indulgence or the waiver of the Company's rights in respect to any further Contracts.
- 11.2. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 11.3. The Company may at any time assign, transfer or subcontract all or any of its rights or obligations under the Contract. The Customer may not assign, transfer or subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Company.
- 11.4. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

12. NOTICES

- 12.1. Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-

paid first class post, recorded delivery, commercial courier, fax or e-mail.

- 12.2. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 12.1; 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 pre-paid fax or e-mail, one Business Day after transmission.

13. GOVERNING LAW AND JURISDICTION

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

14. DEFINITIONS

In these Terms and Conditions the following definitions apply:

"Business Day" means a day other than a Saturday, Sunday or public holiday;

"Company" means Cotteswold Dairy Limited of Dairy Way, Northway Lane, Tewkesbury, Gloucestershire GL20 8JE (Company No. 00447327);

"Contract" means the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Terms and Conditions;

"Customer" means the person, firm or company who purchases the Goods from the Company as set out in any Order or quotation;

"Goods" means the goods (or any part of them) as set out in the Order;

"Order" means the Customer's order for the Goods as set out in the Customer's purchase order form or the Customer's written or verbal acceptance of the Company's quotation, or where no quotation is given to the Customer by the Company, the Customer's written or verbal request for Goods;

"Terms and Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with condition 1.2.

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