

COTTESWOLD DAIRY LIMITED
TERMS AND CONDITIONS OF TRADING

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. The Company does not contract on the Customer's own terms and conditions and any acceptance or counter offer by the Customer following an offer or quotation by the Company shall be deemed to have been made on the understanding that these Terms and Conditions shall apply to any contract subsequently concluded 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.

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 will be made to the Customer's premises as set out in the Order and will 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 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.
- 3.4 Without prejudice to any other right or remedy of the Company, the Company reserves the right to suspend delivery of Goods to the Customer if there is any outstanding liability owing to it by the Customer or if in the Company's opinion the Customer will not be able to meet any existing or future commitment to the Company.

4. CLAIMS FOR LOSS, DAMAGE OR SHORTAGES

- 4.1 Delivery of invoices will be deemed proof of delivery of all Goods specified therein unless claims in respect of LOSS, DAMAGE, SHORTAGES OR NON DELIVERY, are reported by the Customer in writing within seven days of the date of issue of the said invoice.
- 4.2 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, malicious damage, 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 such circumstances, be liable in respect of any indirect or consequential loss to the Customer including but not limited to loss of profits.

5. TITLE AND RISK

- 5.1 Delivery of the 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.

- 5.2 All Goods supplied shall remain the Company's property so 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.
- 5.3 Notwithstanding condition 5.2 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 Customer's expense claims for the proceeds of their sale equal to the price of the Goods supplied by the Company.
- 5.4 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.
- 5.5 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.
- 5.6 Notwithstanding the provisions of The Sale of Goods Act 1979 all glass milk bottles and all crates, pallets and cages shall 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.
- 5.7 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, 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 S123 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; (b) the Customer commences negotiations with any class of its creditors with a view to rescheduling any of its debts, or enters into any arrangement 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.

6. 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 or the Company has otherwise agreed.

7. APPROVED CREDIT FACILITIES

- 7.1 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.
- 7.2 Interest will be chargeable at the rate of 1.5% per calendar month calculated monthly on invoices which shall remain unpaid for 14 days from the date on which they were first due for payment. Interest at the 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.
- 7.3 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, if in the Company's opinion the Customer will not be able to meet any existing or future commitments to the Company.

- 7.4 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 payment.

8. WARRANTY

- 8.1 With the exception of those Goods which are not of the Company's own manufacture, all Goods supplied are warranted to be of the nature, substance and quality described in the Company's specification and to conform in every respect with all UK Acts, Regulations and Orders affecting the sale of such Goods including the requirements for labelling of such Goods or any matters or statements forming part of or contained in the labelling of such Goods, save insofar as such labelling matters or statements conform with the description or specification of such Goods (in regard to name weight, constituents and other matters) as agreed to be supplied by the Company. Where the Goods supplied are not of 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.
- 8.2 The Company undertakes that if it receives notice that any of the Goods supplied were defective and if 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 gives immediate notice of any alleged defect 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. This warranty does not apply and the Company shall not be liable in the event that the defect is caused or contributed to 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.

8.3 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, howsoever arising, shall not exceed the price of the Goods under the Contract.

9. 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.

10. 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.

11. RECEIPTS AND RE-PRESENTATION OF CHEQUES

- 11.1 Where payment by a Customer is made by cheque or traders credit a receipt will not be issued unless specifically requested.
- 11.2 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.

12. WAIVER OF CONDITIONS OR INDULGENCE

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.

13. NOTICES

- 13.1 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.

- 13.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 13.1; 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 fax or e-mail, one Business Day after transmission.

14. 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.

15. DEFINITIONS

In these Terms and Conditions the following definitions apply:

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

"Company" means Cotteswold Dairy Limited of Unit 22 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;

"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.