

COUNTY MILK PRODUCTS LIMITED
TERMS AND CONDITIONS OF SALE

The customer's attention is drawn in particular to the provisions of clause 9.

1. Interpretation

1.1 Definitions:

Authorised Person: means a company director, trading manager, commercial manager, or procurement manager, as applicable and a **CMP Authorised Person** or **Supplier Authorised Person** shall be interpreted accordingly.

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

Business Hours: the period from 9.00 am to 5.00 pm (UK time) on any Business Day.

CMP: County Milk Products Limited (registered in England and Wales with company number 2873177 whose registered office is at Dean Court, 85 Adlington Road, Wilmslow, Cheshire, SK9 2BT), Oak Leaf Dairy Products Limited (registered in England and Wales with company number 09727808 whose registered office is at Dean Court, 85 Adlington Road, Wilmslow, Cheshire, SK9 2BT) or any company in the County Milk Products Limited Group [as identified in the Order].

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

Contract: the contract between CMP and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from CMP.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond CMP's reasonable control.

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

Group: in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

Order: the Customer's order for the Goods, whether verbal or in writing, in which the Customer agrees CMP's Quotation.

Price: the price of the Goods set out in the Sales Order, or, if no price is stated, the price set out in CMP's published price list in force as at the date of delivery.

Quotation: CMP's Price quotation for the Goods;

Sales Order: CMP's written acceptance of a Customer Order;

Specification: the specification for the Goods, forming the basis for any Quotation, as confirmed in the Sales Order.

Warranty Period: the period (if any) for which warranties given pursuant to clause 5.1 or any other warranty specifically stated in the Sales Order are valid, which period shall be stated in the Sales Order, if applicable.

Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (a) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (b) A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the CA 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
 - (i) another person (or its nominee), by way of security or in connection with the taking of security; or
 - (ii) its nominee.
- (c) A reference to **writing** or **written** includes email but excludes fax and social media and electronic messaging applications.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when CMP issues a Sales Order incorporating these Conditions at which point the Contract shall come into existence, or when CMP delivers the Goods, whichever is earlier.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by CMP and any descriptions or illustrations by CMP are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by CMP shall not constitute an offer. A quotation shall only be valid for the validity period set out in the Quotation.

3. Goods

- 3.1 The Goods are described in the Specification.
- 3.2 To the extent that the Goods are to be manufactured and/or supplied in accordance with a Specification supplied by the Customer, the Customer shall indemnify CMP against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by CMP in connection with any claim made against CMP:
- (a) for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with CMP's use of the Specification;
 - (b) by Customers or consumers arising out of or in connection with compliance with the Specification, subject always to condition 9.2.

This clause 3.2 shall survive termination of the Contract.

- 3.3 CMP reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and CMP shall notify the Customer in any such event.

4. Delivery

4.1 CMP shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and CMP reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable); and
- (b) if CMP requires the Customer to return any packaging materials to CMP, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as CMP shall reasonably request. Returns of packaging materials shall be at the Customer's expense unless otherwise agreed in writing in advance.

4.2 CMP shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after CMP notifies the Customer that the Goods are ready or at the time (if any) stated in the Sales Order, subject to condition 4.4.

4.3 Delivery is completed on the earliest to occur of:

- (a) the completion of unloading of the Goods at the Delivery Location; or
- (b) in the case of a stock transfer at a third party warehouse at the time of sending of the corresponding Sales Order by CMP;
- (c) where the Customer is collecting the Goods from CMP, at the time and date set out in the Sales Order.

4.4 CMP will use reasonable endeavours to deliver at the time stated in the Sales Order (if any) but any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.5 If CMP fails to deliver the Goods in accordance with conditions 4.2 to 4.4, 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. CMP shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide CMP with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer delays or fails to accept delivery of the Goods when delivered in accordance with condition 4.3, then, except where such failure or delay is caused by a Force Majeure Event or CMP's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed:

- (i) at the date and time of attempted delivery by CMP; or
 - (ii) where the Goods are to be collected by or on behalf of the Customer, at the date and time set out in the Sales Order for collection; and
 - (b) CMP shall at its option:
 - (i) store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance); or
 - (ii) dispose of the Goods and charge the Customer:
 - (A) if destroyed, the Price plus the total costs incurred by CMP in relation to the failed delivery including storage costs and expenses, insurance, transport and disposal costs (**Additional Costs**); or
 - (B) if re-sold, the Additional Costs plus the difference between the Price and disposal sale price.
- 4.7 If CMP delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, CMP shall make a pro rata adjustment to the invoice for the Goods.
- 4.8 CMP may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

- 5.1 Subject to the remainder of these Conditions, CMP warrants that on delivery and for the Warranty Period (if any) the Goods shall:
- (a) conform in all material respects with the Specification; and
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 If the Customer believes that the Goods do not conform to the warranty set out in condition 5.1 then the Customer must:
- (a) give notice in writing to CMP:
 - (i) in relation to dry goods, within a reasonable time of discovery and no later than 2 days after delivery; or
 - (ii) in relation to liquids, prior to unloading,
- that some or all of the Goods do not comply with the warranty set out in clause 5.1;

- (b) give CMP a reasonable opportunity of examining such Goods; and
- (c) (if asked to do so by CMP) return such Goods to CMP's place of business at CMP's cost (subject to such costs being reasonable).

5.3 Subject to the Customer complying with condition 5.2, CMP shall, at its sole option:

- (a) replace the defective Goods (or such part of the Goods as is defective); or
- (b) refund the Price of the defective Goods (or the Price of such part of the Goods as is defective) in full, provided that the Customer shall if requested to do so by CMP retain the Goods (or such part of the Goods as is defective) for collection by CMP or return the Goods (or such part of the Goods as is defective) to CMP at CMP's cost (subject to such costs being reasonable); or
- (c) agree a new Price with the Customer for the non-compliant Goods based on the actual specification of the Goods which revised specification shall be recorded in writing by CMP and be the Specification for the purposes of the Contract; or
- (d) require the Customer to take such reasonable steps as directed by CMP to make the Goods comply with the warranty set out in condition 5.1.

5.4 CMP shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer does not give notice in accordance with condition 5.2;
- (b) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (c) the defect arises because the Customer failed to follow CMP's oral or written instructions as to the storage, transportation and use of the Goods or (if there are none) good trade practice regarding the same;
- (d) the defect arises as a result of CMP following any specification supplied by the Customer;
- (e) the Customer alters or rectifies such Goods without the written consent of CMP;
- (f) the defect arises as a result of wear and tear, wilful damage, negligence, or abnormal storage conditions; or
- (g) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, CMP shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by CMP.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) CMP receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as CMP's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full Price from the date of delivery;
- (d) notify CMP immediately if it becomes subject to any of the events listed in clause 10.1(c) to clause 10.1(f); and
- (e) give CMP such information as CMP may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before CMP receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as CMP's agent; and
- (b) title to the Goods shall pass from CMP to the Customer immediately before the time at which resale by the Customer occurs.

- 6.5 At any time before title to the Goods passes to the Customer, CMP may:
- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 CMP may, by giving notice to the Customer at any time prior to 1 calendar month before delivery, increase the Price to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond CMP's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, and other manufacturing costs);
- (b) increase in the cost of supply to CMP, changes in transportation costs including surcharges, taxes and fuel;
- (c) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (d) any delay caused by any instructions of the Customer or failure of the Customer to give CMP adequate or accurate information or instructions.

7.2 The Price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to CMP at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer unless otherwise specified in the Sales Order.

7.3 CMP may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.4 The Customer shall pay each invoice submitted by CMP:

- (a) within 28 days of the date of the invoice or as otherwise specified in the Sales Order; and
- (b) in full and in cleared funds to a bank account nominated in writing by CMP, and

time for payment shall be of the essence of the Contract.

7.5 If the Customer fails to make a payment due to CMP under the Contract by the due date, then, without limiting CMP's remedies under clause 10, CMP shall be entitled to do any or all of the following at its sole option:

- (a) to charge interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Customer shall pay such interest together with the overdue amount;
- (b) to suspend some or all further deliveries and production of Goods to the Customer under any Contract with CMP without notice;
- (c) cancel some or all further deliveries and production of Goods to the Customer under any Contract with CMP without notice;
- (d) to serve notice on the Customer requiring immediate payment for all Goods delivered under the Contract or any other Contract between the Customer and CMP whether or not payment would otherwise be due.

7.6 Unless otherwise agreed in writing by CMP, all amounts due to CMP under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Product Recall

8.1 CMP shall co-operate with the Customer to a reasonable level in the event of a Customer product recall.

8.2 If required to do so in writing by CMP, the Customer shall implement a product recall in accordance with procedures notified to the Customer in writing and shall do so promptly and efficiently.

8.3 The Customer will co-operate with CMP in all matters relating to a recall or withdrawal of Goods or products incorporating the Goods.

8.4 The Customer shall not issue or publish any statement, press release or notice relating to a recall or withdrawal of Goods or products incorporating the Goods without CMP's prior written consent.

9. Limitation of liability

- 9.1 The restrictions on and references to liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 9.3 Subject to clause 9.2, CMP's total liability to the Customer shall not exceed the Price of the specific Goods in relation to which the claim arose.
- 9.4 CMP shall have no liability whatsoever in respect of any claim, action or proceedings brought by the Customer later than 1 year following the date the cause of action arose.
- 9.5 Subject to clause 9.2, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 9.6 This clause 9 shall survive termination of the Contract.

10. Termination

- 10.1 Without limiting its other rights or remedies, CMP may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract which cannot be remedied;

- (b) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within [7] days of that party being notified in writing to do so;
- (c) the Customer commits multiple breaches (whether of the same provision of the Contract or of different provisions) the cumulative effect of which would be sufficient to justify the inference by CMP that the Customer would continue to default on all or a substantial part of the Contract.
- (d) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
- (e) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (f) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
- (g) there is a change in the Customer's credit insurance value which in CMP's opinion is detrimental to CMP;
- (h) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

10.2 Without limiting its other rights or remedies, CMP may suspend provision of the Goods under the Contract or any other contract between the Customer and CMP if the Customer becomes subject to any of the events listed in clause 10.1(c) to clause 10.1(f), or CMP reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, CMP may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Customer shall immediately pay to CMP all of CMP's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, CMP shall submit an invoice, which shall be payable by the Customer immediately on receipt.

10.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. Force majeure

11.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (Force Majeure Event) provided that the affected party:

- (a) notifies the other party as soon as practicable of the occurrence of the Force Majeure Event and its likely impact on its performance of the Contract; and
- (b) uses all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

11.2 The time for performance of such obligations shall be extended by a reasonable period to be agreed in writing between the parties.

11.3 If the period of delay or non-performance continues for a period which is commercially unacceptable for CMP at its sole discretion, CMP may terminate the Contract by giving 7 days' written notice to the affected party or, in the case of a Contract for the purchase of Goods with a shelf-life of less than 48 hours, immediate written notice without liability to the Supplier.

12. General

12.1 Assignment and other dealings.

- (a) CMP may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of CMP.

12.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of six years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or CMPs of the other party, except as permitted by clause 12.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

12.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 Waiver.

- (a) Except as set out in **Error! Bookmark not defined.2.4**, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

12.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and

enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand provided delivery is signed for or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the email address of the Authorised Person as set out in the Order (or such replacement email address as has been provided in writing by the party to be served);
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address as demonstrated by a signed receipt;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email to an Authorised Person, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.8 Third party rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

12.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.