

COUNTY MILK PRODUCTS LIMITED
TERMS AND CONDITIONS OF PURCHASE

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 15.4.

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

CMP Materials: has the meaning set out in clause 8.

Delivery Date(s): the date(s) specified in the Order.

Delivery Location: the address for delivery of Goods as set out in the Order.

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.

Mandatory Policies: CMP's business policies listed in Schedule 1, as amended by notification to the Supplier from time to time.

Order: CMP's order for the Goods, as set out in CMP's purchase order for or in CMP's written acceptance of the Supplier's quotation as the case may be, signed or authorised by a CMP Authorised Person.

Specification: any specification for the Goods, [including any related plans and drawings,] that is agreed [in writing] by CMP and the Supplier.

Supplier: the person or firm from whom CMP purchases the Goods.

1.2 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.
- (e) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (f) 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.
- (g) [Subject to condition 15.4,] a reference to **writing** or **written** includes email from and to an Authorised Person but excludes fax.

2. Basis of contract

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

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) following a quotation process CMP issuing a purchase order or a written acceptance; or
- (b) the Supplier doing any act consistent with fulfilling the Order.

at which point the Contract shall come into existence.

2.3 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. The goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Specification or samples;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by CMP expressly or by implication, and for any other purpose for which the Goods are commonly supplied, and in these respects CMP relies on the Supplier's skill and judgement;
- (c) where they are manufactured products, be free from defects in design, material and workmanship, except to the extent specifically agreed in writing, for the duration of the shelf life of the Goods as agreed in writing [between the parties/on the Order]; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, safe production, processing, packaging, storage, handling and delivery of the Goods.

3.2 CMP deems the Supplier to be an expert in the supply of the Goods and the Supplier shall inform CMP immediately, and in any case prior to the supply of the Goods, if the Supplier has reason to believe or should reasonably be aware that the Goods do not comply with any of the Supplier's undertakings set out in clause 3.1.

3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.4 CMP may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.5 If following such inspection or testing CMP considers that the Goods do not conform or are unlikely to comply in whole or in part with the Supplier's undertakings at clause 3.1, CMP shall inform the Supplier and the Supplier shall immediately take such remedial action as is required by CMP.

3.6 CMP may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.7 No testing or inspection by CMP shall reduce the Supplier's obligations under the Contract for which the Supplier shall remain fully liable.

4. Delivery

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their final destination;
- (b) the delivery method and means of the Supplier is of a high standard which is to the reasonable satisfaction of CMP;
- (c) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable);
- (d) where applicable and as stated in the purchase order, the Supplier shall send with the Goods or in advance of delivery the relevant certificate of analysis invoice, health certificate and any other documents specified; and
- (e) if the Supplier requires CMP to return any packaging material, that fact is clearly stated in writing in advance of delivery. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- (f) The delivery location is deemed to be suitable by the supplier and is free from obvious issues.

4.2 The Supplier shall deliver the Goods:

- (a) on the Delivery and/or collection Date;
- (b) at the Delivery and/or collection Location; and
- (c) during CMP's normal business hours, or as instructed by CMP.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location. Performance of any services shall be completed once the Supplier has successfully completed all activities which make up the services in question.

4.4 The Supplier shall not deliver the Goods in instalments without CMP's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle CMP to the remedies set out in clause 5.

5. CMP remedies

5.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, CMP may exercise any one or more of the following rights and remedies:

- (a) to terminate the Contract;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods [(if paid)];
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by CMP in obtaining substitute goods from a third party; and
- (f) to claim damages for any other costs, loss or expenses incurred by CMP which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.3 CMP's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. Title and risk

Title and risk in the Goods shall pass to CMP on completion of delivery.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Order.

7.2 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which CMP shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
- (b) includes the costs of packaging, and
- (c) includes the insurance and carriage of the Goods where specified in the Order.

7.3 No extra charges shall be effective unless agreed in writing with CMP.

7.4 The Supplier may invoice CMP for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, CMP's order number, the volume, weight or

quantity of Goods (as applicable), the price, any applicable VAT, the Supplier's VAT registration number and any supporting documents that CMP may reasonably require.

- 7.5 CMP shall pay correctly rendered invoices within 60 days of receipt of the invoice or, if different, in accordance with such other time as agreed on the Order. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.6 If a party fails to make any payment due to the other party under the Contract by the end of the week in which the due date for payment falls, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this condition will accrue each date at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 7 days after the dispute is resolved until payment.
- 7.7 CMP may at any time, without notice to the Supplier, set off any liability of the Supplier to CMP against any liability of CMP to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, CMP may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by CMP of its rights under this condition shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 7.8 Payment does not constitute acceptance or confirmation that Goods provided were provided in accordance with the Contract.

8. [CMP materials]

The Supplier acknowledges that all materials, equipment and tools, drawings, specifications, and data supplied by CMP to the Supplier (**CMP Materials**) and all rights in CMP Materials are and shall remain the exclusive property of CMP. The Supplier shall keep CMP Materials in safe custody at its own risk, maintain them in good condition until returned to CMP and not dispose or use the same other than in accordance with CMP's written instructions or authorisation.

9. Indemnity

- 9.1 The Supplier shall indemnify CMP against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by CMP as a result of or in connection with:

- (a) any claim made against CMP for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against CMP by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against CMP by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10. Insurance

During the term of the Contract and for a period of 6 years after the expiration of the minimum shelf-life of Goods supplied under the Contract as specified in the Order, or if none, 6 years from the latest Delivery Date under the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on CMP's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. Confidentiality

11.1 Each party undertakes that it shall not at any time during the Contract and for a period of 6 years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

- (a) 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 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 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. Compliance with relevant laws and policies

12.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- (b) comply with the Mandatory Policies.

12.2 CMP may immediately terminate the Contract for any breach of clause 12.

13. Termination

13.1 CMP may terminate the Contract in whole or in part at any time before delivery of the Goods with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. CMP shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination to a maximum of the price of the Goods in respect of which the Contract is cancelled less any amount obtained by the Supplier for selling such Goods or work in progress to a third party (with any sales of Goods by the Supplier to a third party subsequent to the cancellation being deemed to be sales of the Goods or work in progress cancelled by CMP ahead of any other goods or work in progress), but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 Without limiting its other rights or remedies, CMP may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract which cannot be remedied;
- (b) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 days of the Supplier being notified in writing to do so;
- (c) the Supplier commits multiple breaches (whether of the same provision of the Contract or of different provisions) the cumulative effect of which:
 - (i) would be sufficient to justify the inference by CMP that the Supplier would continue to deliver a substandard performance of all or a substantial part of the Contract; or
 - (ii) is serious in the widest sense of having a serious effect on the benefit which CMP would otherwise have derived from the Contract.

- (d) the Supplier 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 Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, 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];
- (f) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (g) the Supplier'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.

13.3 On termination or expiry of the Contract, the Supplier shall immediately return all CMP Materials. If the Supplier fails to do so, then CMP may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.4 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.

13.5 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.

14. Force majeure

14.1 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.

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

14.3 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.

15. General

15.1 [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 any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, 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.]

15.2 **[Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of CMP. If CMP consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.]

15.3 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.

15.4 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing (which for the purposes of this condition 15.4 excludes email) and signed by a CMP Authorised Person.

15.5 Waiver.

- (a) Except as set out in clause 2.3, 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.

15.6 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 15.6 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.

15.7 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.

15.8 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.

15.9 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.

15.10 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.

Schedule 1 [CMP'S MANDATORY POLICIES]

The Mandatory Policies are:

- [Modern Slavery and Human Trafficking Policy].
- [Corporate and Social Responsibility Policy].
- [Anti-Bribery and Anti-Corruption Policy].
- [Ethics Policy].
- [Data and Privacy Policy].
- [Security Policy].