

**STAPLE DAIRY PRODUCTS LTD.**

**TERMS AND CONDITIONS OF SALE**

**1. OVERRIDING PROVISIONS AND INTERPRETATION**

- 1.1 Unless otherwise agreed in writing all offers are accepted and all goods sold subject to and upon these Terms and Conditions of Sale (“the Terms and Conditions”) and which the Purchaser shall be deemed to have adopted as the Purchaser’s standard terms of business in relation to all present and future dealings with the Company. The Company does not contract on buyer’s terms and conditions and any acceptance or counter offer by the Purchaser following an offer quotation by the Company shall be deemed to have been made on the understanding that the Terms and Conditions shall apply to any Contract subsequently concluded to the exclusion of any other terms and conditions to which such acceptance or counter offer may have been expressed to be subject or which might otherwise apply.
- 1.2 References to “**the Company**” mean and include the company named above and its successors and assigns. References to an “**Affiliated Company**” mean and include any company of which the Company (as defined above) is for the time being a subsidiary and any subsidiary for the time being of such a company (subsidiary in either case having the meaning assigned to it by section 736 of the Companies Act 1985). References to “**the Purchaser**” mean and include any person, firm, corporation or other legal entity to whom the Company has agreed to supply goods. References to “**the Contract**” mean and include any agreement between the Company and the Purchaser for the supply of goods. No variation of the Contract shall be effective unless it is in writing and refers expressly to these Terms and Conditions and is signed by a Director or (in the case of a variation to Condition 6.1) Account Manager, General Manager or Financial Controller of the Company.
- 1.3 The clause headings shall not affect the interpretation of the Terms and Conditions.
- 1.4 Signature for the Company of any of the Purchaser's documentation will not have any effect on these Terms and Conditions.

**2. PRICES**

- 2.1 Where the Company has quoted by reference to its standard list prices such prices are subject to alteration without notice and goods will be invoiced and charged at the Company’s standard list prices ruling at the date of delivery. The Company will, in such circumstances, use it’s best endeavours to give prior notice to the Purchaser of any such variation in price.
- 2.2 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 additions to, or increases in, the cost of labour, materials, services, transport and ancillary charges occurring between the date of the quotation and the date of delivery of the goods.
- 2.3 All prices quoted are exclusive of VAT and any other applicable tax, duty or imposition.

**3. DELIVERY**

- 3.1 Subject to the Terms and Conditions, acceptance of goods by the Purchaser shall be deemed to take place on delivery. Goods are not supplied on a “sale or return” basis.
- 3.2 Any delivery date quoted by the Company is an estimated date only and the Company shall not be liable for loss or damage attributable to any failure to meet such date.

- 3.3 Exchange delivery pallets of the equivalent quality to those on which the goods are delivered must be made available by the Purchaser at the time of delivery. Should such pallets not be made available then the Company reserve the right to levy a charge on the Purchaser for such pallets at the then current market price for such pallets. This charge would be in addition to the agreed price of goods.
- 3.4 If the Purchaser does not take full possession of all the agreed quantity of goods within the agreed timescale, the Purchaser will be in default. In such circumstances the Company is entitled to store the remaining goods for the account of, and at the risk of, the Purchaser. The Purchaser will reimburse the Company for all such storage costs and/or other damages incurred by the Company due to the default of the Purchaser. The Company may, at its own option sell these goods to a third party.

#### **4 CLAIMS FOR LOSS, DAMAGE OR SHORTAGE**

- 4.1 Delivery notes must be checked and signed by the Purchaser. An invoice will be deemed proof of delivery of all goods specified therein unless claims are notified in writing within three days of the date of issue of the invoice in respect of claims for LOSS, DAMAGE OR SHORTAGES.
- 4.2 The Company will not be liable for any financial, economic or consequential loss (including loss of profits) resulting from the Company's performance of or failure to perform its obligations except further to Condition 4.3.
- 4.3 The Purchase must notify the Company immediately in writing of any condemnation or seizures for whatever reason and deliver full particulars to the Company within 3 days of the condemnation or seizure supported by certificates signed by a recognised Public Health Official or Official of a recognised Regulatory Body giving full relevant details including any relevant time limits or other conditions and the reason for any seizure.

#### **5 PASSING OF RISK AND TITLE**

- 5.1 Risk of loss of or damage to the goods shall pass to the Purchaser at the time of delivery to a carrier or store designated by the Purchaser.
- 5.2 Notwithstanding that delivery of the goods has been made:
- 5.2.1 The goods shall remain the sole property of the Company as legal and equitable owner and the Company will have a lien on them until full payment of the price by way of cash or cleared funds has been received by the Company.
- 5.2.2 Until the Purchaser becomes the Owner of the goods, it shall hold the goods as the Company's fiduciary agent and bailee and shall store the goods on its premises separately from its own goods or those of any other person and in a manner which makes the goods readily identifiable as those of the Company.
- 5.2.3 Until the Purchaser becomes the Owner of the goods, it shall be entitled to re-sell or use the goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the goods and shall keep all such proceeds separate from any money or property of the Purchaser and third parties.
- 5.2.4 Until the Purchaser becomes the Owner of the goods, the Company shall be entitled upon demand to the immediate return of all goods sold by the Company to the Purchaser and the Purchaser hereby irrevocably authorises the Company and its employees and agents to recover the goods and to enter any premises of the Purchaser for that purpose.
- 5.2.5 The Purchaser may not pledge or in any way charge by way of security any of the Goods which remain the property of the Company.

## 6. PAYMENT

- 6.1 The purchase price and any ancillary charges in respect of goods despatched are due and payable in full by the due date as stated on the invoice or if none 28 days after the date of issue of the invoice. Where payment is made otherwise than in cash a receipt will not be issued unless specifically requested.
- 6.2 Without prejudice to any other right or remedy, the Company reserves the right immediately to suspend delivery of further supplies if:
- (a) the Purchaser fails to settle accounts in accordance with Condition 6.1; or
  - (b) there is any outstanding liability owing to it by the Purchaser; or;
  - (c) in its reasonable opinion the Purchaser will not be able or will be unlikely to be able to meet any existing or future commitment to the Company or any Affiliated Company.
- 6.3 The Company reserves the right (as well after as before judgement) to charge interest at the rate of 1.5 (one point five) per cent per calendar month, or 6 (six) per cent per annum above the base rate for the time being of Barclays Bank PLC (whichever is the higher) compounded monthly on sums unpaid after the due date for payment under Conditions 6.1, 6.4 or 7 (as the case may be). Interest shall be chargeable from the due date for payment to the date of actual payment.
- 6.4 Notwithstanding anything in the Terms and Conditions expressed or implied to the contrary, in the event of the Purchaser ceasing to take supplies from the Company (for whatever reason) or the Company ceasing to deliver supplies to the Purchaser (for whatever reason) then and in such circumstances all sums invoiced shall fall due for immediate payment.

## 7. PURCHASER'S INSOLVENCY, ETC.

If:

- (a) the Purchaser makes any voluntary arrangement with creditors or becomes subject to an administration order or a petition is presented or order made for the bankruptcy or (other than for the purposes of amalgamation or reconstruction) winding up of the Purchaser; or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Purchaser; or
- (c) the Purchaser ceases, or threatens to cease, to carry on business; or
- (d) the Company reasonably apprehends that any of the events mentioned above is about to occur and notifies the Purchaser accordingly.

Then, without prejudice to any other right or remedy, the Company may cancel the Contract or suspend deliveries without any liability to the Purchaser and if goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any terms or agreement to the contrary.

## 8. WARRANTY

- 8.1 Subject to Condition 8.2 the Company (acknowledging that reliance will be placed by the Purchaser on the warranties herein contained) warrants to the Purchaser:
- (a) that (except where otherwise indicated on the Company's invoices) all goods supplied will be at the time of their delivery to the Purchaser of the nature, substance and quality described and will comply in all respects with the Food Safety Act 1990 and any orders and regulations made thereunder and with all other applicable UK legislation for the time being in force;

- (b) that the Company operates (in a manner and to a standard necessary to ensure its compliance with the requirements of all applicable UK legislation with regard to quality and safety) quality control, monitoring and checking procedures in respect of the goods, their ingredients and packaging.

8.2 **Provided that:**

- (a) as regards any goods manufactured to the Purchaser's specification or supplied in labelling devised by the Purchaser the foregoing warranties (and any conditions or warranties which might otherwise be implied under statute or at common law) shall not apply unless the Company has given written and unreserved approval of such specification and labelling;
- (b) there are expressly excluded all terms, conditions and warranties (whether statutory or otherwise) to the effect that any goods supplied:
  - (i) may lawfully be supplied or offered for sale outside the UK; or
  - (ii) are suitable for mixing, blending or compounding with other goods unless prior to the contract for the sale of such first mentioned goods the Purchaser has made full disclosure of all material facts relating to the use to which such goods are to be put and of any particular standards, requirements or specifications with which those other goods are expected to conform;

- 8.2 (cont.) (c) the Company shall be under no liability to the Purchaser in respect of any defect in goods or for any non-compliance of goods with any applicable legislation where such defect or non-compliance is attributable to specifications or labelling devised by the Purchaser (unless approved in accordance with Condition 8.2(a) ) or to the failure by the Purchaser to make disclosure as required by the Condition 8.2(b) (ii) and the Purchaser will indemnify the Company from and against all losses and Liability arising in consequence of any such defect or non-compliance.

8.3 The Purchaser shall not make or give any representations, warranties or guarantees with reference to goods supplied by the Company except such as are consistent with the Terms and Conditions.

8.4 The Company's liability to the Purchaser, for breach of any condition, warranty or duty, (whether expressed herein or implied by statute or common law, and including any claim for negligence in so far as it is lawful to exclude liability therefore) shall be limited to £500,000 in respect of any one claim or of claims in consequence of or attributable to the same occurrence or set of circumstances.

9. **STORAGE**

In respect of goods supplied by the Company the Purchaser will ensure the observance and maintenance of storage and handling conditions (including temperature controls) and stock rotation in accordance with applicable statutory requirements, industry codes of practice and any recommendations issued by the Company and that goods will not be released for sale or distribution if by reason of their age or having regard to the time normally taken in the progress of goods along the distribution chain or for any other reason they could not reasonably be expected to reach the ultimate consumer in a fresh and wholesome state and prior to the expiry of their recommended shelf life.

10. **EXPORT**

Goods are supplied subject to the Terms and Conditions, and the Purchaser undertakes:

- (a) that goods will not be offered for sale or distributed except within the United Kingdom and such other jurisdictions in which they may lawfully be sold and distributed;
- (b) that goods will not be exported to or offered for sale or distributed in tropical or semi-tropical zones unless the Company has confirmed in writing that they are suitable for that purpose;

- (c) that the Purchaser will inform such of its purchasers and consignees as are not retail customers of the Terms and Conditions..

## 11. **GOODS MANUFACTURED TO PURCHASER'S SPECIFICATIONS**

Where goods are to be manufactured and/or labelled to the Purchaser's specification:

- (a) the Company reserves the right (but shall not be obliged) to make such changes in the specifications as shall be necessary to comply with any applicable legislation;
- (b) the Purchaser shall indemnify the Company against all losses and liability incurred in consequence of any claim that the use of the Purchaser's specification or labelling infringes any industrial or intellectual property rights.

## 12. **FORCE MAJEURE**

12.1 To the extent that execution by the Company of any order is rendered impracticable by reason of Force Majeure (as hereinafter defined) the Company shall forthwith notify the Purchaser and thereupon and to that extent the parties shall be excused from further performance of the Contract and (where applicable) the price shall be adjusted pro rata. The Purchaser shall in any event reimburse the Company (to the extent that the Company is not otherwise able to recoup the same) the cost of manufactured and partly manufactured goods and of ingredients, packaging and labelling (all being referable to a contract for the supply to the Purchaser of goods to the Purchaser's specification) and any costs incurred by the Company in connection with the disposal of any such goods, ingredients, packaging and labelling.

12.2 In clause 12.1 above "**Force Majeure**" means any cause affecting the performance of the Contract arising from or attributable to acts, events or circumstances beyond the reasonable control of the Company and (without limiting the generality of the foregoing) shall be deemed to include; strikes, lock outs or other industrial action (whether involving employees of the Company or a third party); civil commotion; riot; invasion; war; threat of or preparation for war; fire; explosion; radioactivity; storm; flood, earthquake, subsidence; epidemic or other natural physical disaster; acts or restraints of any government or local authority; import or export regulations or embargoes; difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

## 13. **WAIVER**

Any indulgence granted by the Company to the Purchaser or any waiver by the Company of its rights under the Terms and Conditions in respect of any particular transaction or series of transactions shall not be deemed an agreement to confer the same indulgence or the waiver of the Company's rights in respect of any further transaction(s).

## 14. **SET OFF**

The Purchaser acknowledges that in the event of the Purchaser's insolvency or in such other circumstances as the Company may determine, sums owing to the Purchaser by an Affiliated Company may be set off in extinction or diminution of sums due from the Purchaser to the Company.

## 15. **PROPER LAW**

The construction, validity and performance of the Contract shall be governed by English law and the Purchaser hereby irrevocably submits to the jurisdiction of the English Courts.