

LAKELAND DAIRIES CO-OPERATIVE SOCIETY LIMITED - TERMS OF SUPPLY

1. INTERPRETATION

1.1. In these Terms of Supply:

“**Buyer**” means the party requesting the Seller to supply Products, as identified in the Purchase Order. For the avoidance of doubt, references to the Buyer shall include any agent of the Buyer;

“**Contract**” means an agreement for the supply of goods and/or services between the Buyer and the Seller, consisting of a Purchase Order, a Sales Order (where applicable) and these Terms of Supply;

“**Effective Date**” means, in respect of a Contract, the date upon which the Contract comes into existence pursuant to Clause 2.1;

“**Products**” means the goods, products, services and/or other deliverables to be supplied by the Seller, as described in the Contract;

“**Purchase Order**” means any verbal or written order for Products issued by the Buyer;

“**Sales Order**” means any acceptance, acknowledgement or confirmation of a Purchase Order confirmed in writing by the Seller or its authorised representatives to which these Terms of Supply are attached and issued to the Buyer;

“**Seller**” means Lakeland Dairies Co-Operative Society Limited, incorporated and registered in the Republic of Ireland, company number 4622R, whose registered office is at Killeshandra, County Cavan, Ireland.

1.2 In interpreting these Terms of Supply or a Contract:

- no regard shall be had to the *contra proferentem* rule or any similar rule of interpretation which would narrow the meaning of the words used in these Terms of Supply or a Contract in a manner prejudicial to one party only;
- any words following the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- in the event of any conflict or inconsistency between any provisions of these Terms of Supply, a Purchase Order and/or a Sales Order, then unless expressly provided otherwise in the relevant Purchase Order or Sales Order, such conflict or inconsistency shall be resolved by giving the following precedence:
 - these Terms of Supply;
 - the Sales Order; and
 - the Purchase Order.

2. BASIS OF SALE

2.1 The Seller shall sell and the Buyer shall buy the Products in accordance with the terms of a Contract. A Contract shall not come into existence unless and until the Buyer issues a Purchase Order to the Seller which is confirmed by the Seller either:

- issuing a Sales Order to the Buyer; or
- delivering the Products or any of them to the Buyer in accordance with the Purchase Order.

2.2 These Terms of Supply shall govern the Contract to the exclusion of any other terms and conditions subject to which any such Purchase Order is made or purported to be made or any such Sales Order is accepted or purported to be accepted, by the Buyer, and/or which are implied by trade, custom, practice or course of dealing.

2.3 No variation to these Terms of Supply or a Contract shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.4 The Seller’s employees or agents are not authorised to make any representations concerning the Products unless expressly confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS AND DELIVERY

3.1 The Seller shall not be obliged to accept any Purchase Order and reserves the right to withdraw any Products from its product range or to vary its product range at any time as it thinks fit. Any Purchase Order shall, unless expressly provided otherwise in the Purchase Order, be irrevocable by the Buyer.

3.2 The Seller shall deliver the Products in accordance with the Contract, provided that time for delivery shall not be of the essence. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Purchase Order. Where the Seller is responsible for delivery to the Buyer’s nominated delivery location, the Seller shall deliver using its nominated hauliers/distributors. The Buyer must ensure that the delivery location that it nominates is reasonably accessible by the large, commercial vehicles that may be used from time to time to deliver the Products and that suitable unloading facilities are available, consistent with good health and safety practices.

3.3 The Buyer is responsible for ensuring that there is a suitable person available to inspect and accept delivery of the Products as delivered on behalf of the Buyer during normal working hours of 9am to 5pm Monday to Friday. If no one is available to accept delivery of the Products upon their delivery, the driver may leave without delivering the Products, in which event the Buyer shall bear all costs and expenses arising from delivery at another time or another date, or leave the Products at the delivery location unattended, at the Buyer’s risk.

3.4 If the Buyer fails to accept delivery of the Products within a reasonable period, and in any event within 48 hours, of the date on which they were first tendered for delivery at the delivery location by the Seller, otherwise than due to a breach by the Seller of its obligations under the Contract, then at the Seller’s option, either:

- the Products shall be deemed to have been delivered and accepted upon the expiration of such 48 hour period; or
- the Seller may sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

4. RISK AND TITLE

4.1 Risk of loss of or damage to any Product shall pass to the Buyer upon delivery by the Seller (or its duly appointed carrier) to the Buyer’s nominated delivery location. If the Buyer wrongfully fails to take delivery of the Products the risk shall pass at the time the Seller tendered delivery of the Products. Where the Buyer arranges for the collection of Products, risk of loss of or damage shall pass to the Buyer upon collection by the Buyer (or its duly appointed carrier).

4.2 Notwithstanding the provisions of Clause 4.1, title to the Products supplied to the Buyer shall remain the sole and absolute property of the Seller until unconditional payment in full for the Products in question has been received.

4.3 Until title to the Products passes to the Buyer, the Buyer shall keep the Products as bailee and in a fiduciary capacity for the Seller and shall ensure that the same remain at all times separately identifiable as the property of the Seller (such storage to be in accordance with the Seller’s recommendations) and shall return them to the Seller on request.

4.4 Nothing in this clause shall confer any right upon the Buyer to return any Products and the Seller may maintain an action for the price of any Product notwithstanding that property in the Product shall not have vested in the Buyer.

4.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Seller but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

4.6 To the greatest extent permitted by applicable law, the Buyer shall be solely responsible for any use of the Products following their delivery, including their storage, distribution, sale or consumption. Without prejudice to the generality of the foregoing, the Buyer shall comply with all applicable laws and with any reasonable instructions of the Seller in connection with its use of the Products.

5. PAYMENT

5.1 Unless expressly provided otherwise in the Contract, the prices for the Products shall be as specified in the most recently published version of the Seller’s price list and shall be exclusive of VAT and any other applicable taxes or duties, which shall be payable by the Buyer at the rate and in the manner prescribed by law from time to time. Any consular fees, customs or import duties imposed by the country of importation or any subdivision thereof will be paid by the Buyer. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination. The Buyer shall pay for all charges incurred in establishing Bank credits.

5.2 The Seller may issue an invoice for Products delivered upon delivery. Any invoiced amount shall be payable upon the date of the invoice in cash or by credit transfer to the Seller’s nominated bank account, unless expressly agreed otherwise in the Contract.

5.3 If the Buyer has been approved in writing by the Seller to operate a credit account:

- any invoiced amounts shall be payable within 28 days (or as otherwise agreed) from the date of the invoice; and
- the Seller may reduce any previously agreed credit limit for the Buyer if the Buyer’s financial position reasonably appears to have worsened in the intervening period since the limit was originally agreed or if the Buyer persistently fails to make payments to the Seller on or before the applicable due dates.

5.4 The Seller shall be entitled to charge the Buyer interest (both before and after any judgment) on any overdue payments, from the due date until the date of actual payment in full, at the rate of 2% above the EURIBOR (one month rate) as published by the European Central Bank from time to time.

5.5 If the Contract includes any discount or volume based rebate, such discount or rebate shall be conditional upon the Buyer complying strictly with the agreed payment terms and/or volume purchase commitment, where applicable.

5.6 The Seller may, without notice to the Buyer, set off any amounts owing to the Seller under the Contract against any monies owing from the Seller to the Buyer whatsoever. The Buyer may not withhold or delay payment of any amount payable under the Contract, nor may the Buyer set off against any amount payable under the Contract against any monies owing from the Seller to the Buyer.

6. WARRANTIES

6.1 The Seller warrants that the Products shall upon delivery comply in all material respects with any description or specification relating to them set out in the Contract.

6.2 The Buyer shall inspect the Products upon delivery and shall notify the Seller of any breach of the warranty set out in Clause 6.1 as soon as possible and in any event within 48 hours of delivery or, if the breach could not reasonably have been discovered on proper inspection upon delivery, within 48 hours of the Buyer becoming aware of the breach. Provided that the Buyer complies with the foregoing, the Seller shall accept the return of any Products which does not comply with the warranty set out in Clause 6.1 and, at the Seller’s option, either supply replacement Products as soon as reasonably possible at no additional cost to the Buyer or refund the price paid for such Products to the Buyer.

6.3 Except as expressly set out in the Contract, all conditions, statements, warranties and representations, express or implied, whether by statute, common law or otherwise, are hereby excluded to the greatest extent permitted by applicable law.

7. CONFIDENTIALITY

7.1 In this Clause 7, “Confidential Information” means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) whether before or after the date of the Contract which ought reasonably to be regarded as confidential including, without limitation, information relating to the Disclosing Party’s products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

7.2 Each party shall not, without the prior written consent of the other party, use Confidential Information for a purpose other than the performance of its obligations and the exercise and enforcement of its rights under the Contract.

7.3 The provisions of this clause shall not apply to: (a) any information in the public domain otherwise than by breach of these terms; (b) information in the possession of the Receiving Party before such disclosure; (c) information obtained from a third party who is free to divulge the same; (d) information which is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulatory authority.

7.4 The obligations of both parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of the Contract.

8. LIABILITIES

8.1 Nothing in the Contract excludes or limits the liability of either party for death or personal injury caused by its negligence, for fraud or for fraudulent misrepresentation.

8.2 Subject to Clause 8.1, in no event shall the Seller have any liability whatsoever to the Buyer, whether in contract, tort (including negligence) or otherwise, for any indirect, special, incidental, economic or consequential loss or damage, including loss or damage incurred as a result of loss of time, loss of savings, loss of data, loss of goodwill, loss of business or loss of profits.

8.3 Subject to Clause 8.1, the Seller’s entire liability under or in connection with any Contract, whether in contract, tort (including negligence) or otherwise, for any loss or damage whatsoever, arising out of or in connection with the Contract or otherwise shall not in any event exceed the price of the Products supplied under that Contract.

9. FORCE MAJEURE

9.1 The Seller shall not be liable for any failure or delay in the performance of its obligations under the Contract to the extent caused by circumstances or events beyond its reasonable control, including: (a) Act of God, explosion, flood, tempest, fire, accident; (b) war or threat of war, sabotage, insurrection, civil disturbance, requisition or malicious damage; (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; (d) import or export regulations or embargoes; (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving personnel of the Seller or of a third party); (f) failure of a utility service or transport or telecommunications network; or (g) difficulties of the Seller’s suppliers in obtaining raw materials, labour, fuel or parts of machinery.

10. TERMINATION/SUSPENSION

10. The Seller may terminate the Contract and/or suspend delivery with immediate effect by written notice to the Buyer if:

- the Buyer is in material breach of the Contract and, in the event of a breach capable of being remedied, fails to remedy the breach within 7 days of receipt of notice in writing of such breach; or
- a receiver, examiner, administrator, manager, liquidator or any similar officer is appointed over the whole or any part of the business or assets of the Buyer, the Buyer makes an assignment for the benefit of its creditors, any proceedings are commenced by or against the Buyer under any bankruptcy or insolvency legislation, the Buyer becomes unable to pay its debts as they fall due, an order is made or a resolution passed for the dissolution or winding up of the Buyer; or anything analogous to the foregoing occurs in respect of the Buyer in any applicable jurisdiction.

10.2 Termination of the Contract by either party in accordance with Clause 10.1 shall not affect either party’s rights or liabilities accrued prior to termination, including the Seller’s right to be paid for Products previously supplied under the Contract.

11. MISCELLANEOUS

11.1 The Contract constitutes the entire agreement between the Buyer and the Seller with respect to its subject matter. No modification, alteration or waiver of the provisions of the Contract or any oral representations shall be effective unless made or confirmed in writing and signed by the Seller or an authorised representative of the Seller and the Buyer. The Buyer acknowledges and agrees that in entering into the Contract it does not rely on and shall have no remedies in respect of, any advice, recommendation, undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in these Conditions.

11.2 The Seller reserves the right to modify these Terms of Supply as it considers appropriate at any time and from time to time. Such revised Terms of Supply shall apply to any Contract entered into in accordance with such revised Terms of Supply after their adoption by the Seller.

11.3 The Buyer may not assign, sub-contract, charge or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Seller.

11.4 The Seller may sub-contract all or any of the production or delivery of the Products without the consent of the Buyer but without affecting the Seller’s liability for proper performance.

11.5 Failure by either party to exercise or enforce any of its rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

11.6 Except where the Contract expressly provides otherwise, the rights and remedies contained in the Contract are cumulative and not exclusive of rights or remedies provided by law.

11.7 Any notice required to be given to the Buyer under the Contract shall be in writing addressed to the Buyer at its registered office or principal place of business.

11.8 Any notice required to be given to the Seller under the Contract shall be in writing addressed to the Company Secretary, Lakeland Dairies Co-Operative Society Limited, Killeshandra, Co. Cavan, Ireland.

11.9 If any provisions of these Terms of Supply or a Contract, or any part of a provision of these Terms of Supply or a Contract, is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then the legality, validity and enforceability of the other provisions of these Terms of Supply or a Contract and the remainder of the provision in question shall not be affected thereby.

11.10 Nothing in these Terms of Supply or a Contract shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties. No party shall have authority or power (and shall not represent themselves as having such authority or power) to contract in the name of the other party or to undertake any liabilities or obligation on behalf of or to pledge the credit or the other party.

11.11 The Contract shall be governed and construed in accordance with the laws of Ireland and, subject to Clause 11.12, the parties hereto submit to the exclusive jurisdiction of the Irish Courts for the resolution of disputes under or in relation to the Contract, including any non-contractual disputes.

11.12 If any dispute arises in connection with the Contract, the parties agree to enter into mediation to seek to resolve such a dispute before resorting to litigation and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. Nothing in this Clause shall prevent either party from seeking injunctive relief to protect or enforce its legal rights.