

## **Terms and Conditions of Sale**

### **1. DEFINITIONS**

- (a) "The Company" shall mean Ornuu Butter Trading UK Limited (Company Registration 2817849) and its successors and assigns.
- (b) "Goods" shall mean any materials, products or services ordered in accordance with the contract together with any subsequent modification specified by the Purchaser and agreed by the Company in writing.
- (c) "The Purchaser" shall mean and include any person, firm, corporation or other legal entity to whom the Company has agreed to supply goods.
- (d) "The Contract" shall mean and include any agreement between the Company and The Purchaser for the supply of goods. No variation to the Contract shall be effective unless it is in writing, refers expressly to these Terms and Conditions and is signed by a Director of the Company.
- (e) "Force Majeure" shall mean 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, fire, explosion, radioactivity, storm, flood, earthquake, subsidence, epidemic, or other natural physical disaster, acts or restraints of any government or local authority and import or export regulations or embargoes.
- (f) "Specification" shall mean the documentation defining the Goods as issued by the Company and forwarded to the Purchaser or if originated by the Purchaser agreed in writing by a Director of the Company prior to the conclusion of the Contract.
- (g) "Quality Assured Status" shall mean that unless otherwise agreed in writing the Company may arrange for the manufacture of the Goods at any of its approved sub-contractors and no warranty is given or implied as to the quality assured status of such subcontractor.

### **2. OVERRIDING PROVISIONS AND INTERPRETATION**

Unless otherwise agreed in writing all offers are accepted, quotations submitted and all goods supplied subject to the following Terms and Conditions of Sale 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 Purchasers terms and conditions and any acceptance or counter offer by the Purchaser following an offer or quotation by the Company shall be deemed to have been made on the understanding that these Terms and Conditions shall apply to any Contract subsequently concluded 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.

### **3. PRICE OF THE GOODS**

- 3.1 The Price of the Goods shall be the Price agreed at the time of the Contract unless otherwise agreed for whatever reason in writing between the Company and the Purchaser.
- 3.2 All prices quoted are exclusive of VAT and any other applicable tax, duty or imposition unless otherwise expressly stated in the Contract.

### **4. DELIVERY**

- 4.1 Subject to these Terms and Conditions acceptance of Goods shall be deemed to take place on delivery.
- 4.2 Any delivery date quoted is given in good faith by the Company and the Company shall not be liable for loss or damage attributable to any failure to meet such date.
- 4.3 Exchange delivery pallets of the equivalent quality to those on which the goods were 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 going market price for such pallets. This charge would be totally outside the agreed Price of Goods.

### **5. CLAIMS FOR LOSS, DAMAGE OR SHORTAGE**

Any damage to the goods in transit or claims for shortages should be notified by the Purchaser in writing to the Company as soon as is possible but no later than three days after the delivery of the goods.

## 6. TITLE AND RISK

6.1 Notwithstanding delivery and passing of risk the goods supplied shall remain the Company's property until payment in full for those Goods has been received by the Company but the risk shall pass to the Purchaser on delivery.

6.2 Notwithstanding Condition 6.1 the Purchaser shall be entitled to use the goods in the ordinary course of business or to resell them at their full market value provided that where goods are resold, as between the Purchaser and the Company the Purchaser shall act as agent of the Company and shall hold, and pursue on behalf of the Company at the Purchaser's expense claims for so much of the sale proceeds thereof as equates to their contract price.

6.3 Until the property in the Goods passes to the Purchaser and provided the goods are still in existence and have not been resold the Company shall be entitled at any time to enter upon any premises where the goods are stored and repossess the Goods.

## 7. PAYMENT

7.1 The Purchaser shall make payment for the Goods in strict accordance with the terms agreed between the parties from time to time as confirmed in the Contract and further confirmed on the invoice. Payment shall be made with good value to the Company account on or before the due date as specified on the invoice.

7.2 Without prejudice to any other right or remedy the Company reserves the right immediately to suspend delivery of further supplies if the Purchaser fails to settle accounts in accordance with Condition 7.1 or if there is any outstanding liability owing to it by the Purchaser or if in its opinion the Purchaser will not be able or will be unlikely to be able to meet any existing or future commitment to the Company.

7.3 The Company reserves the right, as well after as before judgment, to charge interest at the rate of 4 (four) per cent per annum above the base rate for the time being of HSBC Bank PLC compounded weekly on sums unpaid after the due date for payment under Condition 7.1 or Condition 7.4 or Condition 8, as the case may be. Interest shall be chargeable from the due date for payment to the date of actual payment. Any such invoice raised will become payable within 7 (seven) days and shall fall outside the scope of any agreement under 7.1.

7.4 Notwithstanding anything in these Terms and Conditions expressed or implied to the contrary, in the event of the Purchaser ceasing to take supplies from the Company during the currency of a contract 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.

## 8. PURCHASERS INSOLVENCY

The Company may without prejudice to any other right or remedy may cancel the Contract or suspend deliveries without any liability to the Purchaser and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any terms or agreement to the contrary 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 the winding up of the Purchaser other than for the purposes of amalgamation or reconstruction or
- (b) a receiver is appointed or an encumbrancer takes possession 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.

## 9. WARRANTY

9.1 The Company, acknowledging that reliance will be placed by the Purchaser on the warranties herein contained, warrants to the Purchaser that the Goods:

- (a) At the time of delivery to the Purchaser are of the nature, quality, substance, quantity and description ordered by the Purchaser and that they comply in every respect with the Food Safety Act 1990 and any orders and regulations made there under and with all other applicable United Kingdom legislation for the time being in force together with the Company's product specification as issued to the Purchaser.
- (b) Have been adequately inspected and tested prior to delivery to ensure compliance with the said statutes and regulations referred to in condition 9.1(a).
- (c) Where samples are provided by the Company the Goods shall conform to the samples and in any event the samples supplied must conform to the provisions of condition 9.1(a).
- (d) The Purchaser may reject any goods that do not comply with the above and the Company shall be limited to the Purchaser for all costs of withdrawal and disposal or return to the Company.

9.2 The purchaser shall not make or give any representations, warranties or guarantees with reference to Goods supplied by the Company except such that are consistent with these Terms and Conditions.

9.3 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 UKL 500,000 in respect of any one claim or of claims in consequence of or attributable to the same occurrence or set of circumstances.

## 10. 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 recommendations as stipulated in the specification issued by the Company to the Purchaser.

## 11. FORCE MAJEURE

To the extent that execution by the Company of any Contract, or part of any Contract, is rendered impracticable by reason of Force Majeure, the Company shall forthwith notify the Purchaser and thereupon and to that extent the parties shall be excused from further performance of the Contract or that part of it. The Purchaser shall in any event reimburse the Company to the extent that the Company is not otherwise able to recoup any costs involved should the Purchaser be proved to be at fault.

## 12. WAIVER

Any indulgence granted by the Company to the Purchaser or any waiver by the Company of its rights under these 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 waiver of the Company's rights in respect of any further transactions.

## 13. 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 owed by any Affiliated Company may be set off in extinction or diminution of sums due from the Purchaser to the Company.

## 14. PROPER LAW

English Law shall govern the construction, validity and performance of the Contract and the Purchaser hereby irrevocably submits to the jurisdiction of the English Courts.

Ornua Butter Trading UK Limited  
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