



# BRITMILK Terms and Conditions of Sale

## 1. DEFINITIONS

In these conditions of sale 'the Company' means BRITMILK Ltd, 'the Goods' means any products, materials, equipment or services to be supplied by the Company: 'the Customer' means any company, partnership, firm or individual from whom the Company receives and accepts an order for the purchase of Goods and 'Order' means any mutually binding order received from a Customer and which BRITMILK has accepted.

## 2. APPLICATION OF CONDITION

The Company accepts Orders for the supply of Goods subject only to these conditions. Nothing in these conditions shall affect the statutory rights of the Customer. No variation in these conditions shall be valid or binding on the Company and these conditions shall override any inconsistent terms of conditions contained or referred to in any order or correspondence of the Customer or elsewhere unless such variation is made and accepted in writing by the Company.

## 3. PRICES

Unless otherwise agreed in writing, Goods will be invoiced at the Company's list price ruling at the date of despatch. All prices are strictly net of VAT and any other tax or duty which shall be added to the price payable by the Customer. The Company reserves the right, by giving notice to the Customer at any time before delivery: to increase the price of the Goods to reflect any increase in the cost to the Company for but not limited to:

- (a) labour, materials or transport; or
- (b) any other factor beyond its reasonable control; or
- (c) for any change in delivery dates, quantities of specification of the Goods requested by the Customer; or
- (d) for any delay caused by any instruction of the Customer or failure of the Customer to give the Company adequate information or instruction.

## 4. TERMS OF PAYMENT

- 4.1 Accounts are payable as specified by the payment due date on the face of the invoice unless otherwise agreed in writing by the Company. Without prejudice to the Company's rights, such payment in cleared funds shall be a condition precedent to any further deliveries. Notwithstanding any other provision of the contract, the Company may at its discretion require payment by the Customer for the Goods prior to delivery
- 4.2 No claim by the Customer under warranty or otherwise shall entitle the Customer to any deduction, retention or withholding of any part of any sums due for payment hereunder.
- 4.3 The failure of the Customer to pay any invoice in full (without any deduction of set-off) by the due date shall entitle the Company to charge interest from the due date at 2% per annum above Danske Bank PLC's base rate on the amount outstanding until receipt by the Company in cleared funds of the full amount.

## 5. TIME FOR DELIVERY

Any dates or times quoted by the Company for delivery are estimated only. The company shall not be liable to the Customer for any damage or loss whether direct or indirect arising out of any delay, nor shall the Customer refuse to accept delivery on the grounds of any failure to deliver at or on any particular times or date or dates. Time for delivery shall not be the essence of any Order.

## 6. DELIVERY

- 6.1 Delivery shall be deemed to have taken place when the goods are unloaded at the delivery place which the Customer or his agent has nominated. Where goods are to be collected by the Customer or his agent, delivery shall be deemed to have taken place when the goods have been loaded onto the vehicle collecting them.
- 6.2 The Company reserves the right to deliver Goods by instalment and in such event, each instalment shall be treated as a separate contract and non delivery or delay of any instalment shall not affect any other part of the contract nor entitle the Customer to repudiate or rescind the contract or reject any other instalment.

## 7. QUANTITY DELIVERED

The Company shall be deemed to have fulfilled its contractual obligations in respect of any Order or delivery though the quantity delivered may be up to 10% more or less than the quantity ordered and in such event the Customer shall only pay for the actual quantity delivered.

## 8. NON-ACCEPTANCE OF DELIVERY

- 8.1 If the Customer refuses or fails to take or accept delivery of the Goods at the time of delivery, the contract price for the order shall nevertheless be paid as if delivery had taken place
- 8.2 The Company shall be entitled as its option to terminate the contract with immediate effect, to dispose of the goods as the Company may determine and to recover from the Customer any loss and additional costs incurred as a result of such refusal or failure or to charge the Customer for storage and other loss or expense reasonably incurred or suffered by the Company as a result of such refusal or failure.
- 8.3 The Company shall not be bound to take any steps for the custody and care of such Goods nor shall it be liable for any loss or damage suffered by the Customer arising therefrom.

## 9. PASSING OF TITLE

- 9.1 The absolute legal and beneficial ownership of the Goods shall remain vested in the Company and shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other Goods sold by the Company to the Customer for which payment is outstanding, together with all and any VAT payable on such sums.
- 9.2 Until such payment has been made, the Customer shall be entitled to use or resell the Goods in the ordinary course of its business and if the Customer resells the Goods to a third party, the Customer shall not mingle any proceeds of sale with any other monies and shall at all times keep them in a separate bank account and identifiable as the Company's monies and shall forthwith account to the Company for the proceeds of the sale to the extent of the Customer's indebtedness to the Company.
- 9.3 Save as aforesaid and pending receipt of payment made in accordance with these conditions the Customer shall use its best endeavours to set aside and store the Goods separately from other goods in its possession so as to be clearly and separately identifiable and the Customer shall deliver them up to the Company at any time on demand.
- 9.4 In the event that the Customer shall breach any of its obligations under these conditions of under any other agreement between the parties, the Company reserves the immediate right to re-possess all or any of the Goods to which it has retained title aforesaid and thereafter to re-sell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued right of the Company hereunder or otherwise.

## 10. PASSING OF RISK

The risk in the Goods shall pass to the Customer upon delivery. The Customer shall insure the Goods with a reputable insurance company and if the same are damaged or destroyed then such insurance monies as are payable shall be immediately paid by the Customer to the Company to the extent of the indebtedness of the Customer to the Company and without prejudice to any right of the Company to recover from the Customer any balance of the purchase price remaining due under the contract.

## 11. LIMITATION OF LIABILITY

- 11.1 The Company shall not be liable to the Customer:-
  - (i) for any shortages in quantity delivered (subject to condition 7) unless the Customer notifies the Company in writing of any claim for short delivery within 7 days or receipt of the Goods
  - (ii) in the case where the Company agrees to provide transportation for the Goods, for damage to or loss of the Goods or any part thereof in transit (whether Goods are carried by the Company's own transport or by a carrier on behalf of the Company, but not



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otherwise) unless the Customer shall notify the Company in writing of any such claim with 7 days of receipt of the Goods.

(iii) for defects in the Goods caused by abnormal conditions of storage or use after the Goods have left the control of the Company, or caused by any act, neglect or default of the Customer or of any third party.

(iv) for other defects in the Goods unless notified to the Company within 14 days of receipt of the Goods by the Customer or where the defects would be apparent on reasonable inspection within 6 months of delivery.

11.2 Where liability is accepted by the Company under paragraph (a) above, the Company's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate, to replace any Goods found to be damaged or defective and/or to refund the cost of such Goods to the Customer.

11.3 To the fullest extent permissible by law, the Company's aggregate liability to the Customer howsoever arising whether from any tortious act (including but not limited to negligence), breach of contract, misrepresentation or otherwise, shall be limited to the cost of the defective, damaged or undelivered Goods which give rise to such liability as determined by the net price invoiced to the Customer in respect of any occurrence or series of occurrences.

11.4 Save as provided in this clause 11., all conditions, warranties and representations, express or implied by statute, common law or otherwise in relation to the Goods or in relation to any advice given by the Company under statute, common law or otherwise in relation to the Goods or in relation to any advice given by the Company in relation to the Goods, are hereby excluded and the Company shall be under no liability to the Customer for any loss, damage or injury, direct or indirect, resulting from defective material, faulty workmanship, negligent advice or otherwise howsoever arising and whether or not caused by the negligence of the Company, its employees or agent save that the Company shall accept liability for death or personal injury caused by the negligence of the Company.

## 12. USE OF GOODS

It is the Customer's responsibility to determine whether the Goods are suitable for the contemplated use, whether or not such use is known to the Company. Any technical advice furnished by the Company or its representatives or agents is given without charge and only on the basis that it is followed at the Customer's own risk.

## 13. INSOLVENCY

If the Customer has a receiver appointed in respect of any of its property or business undertaking or announces that it is ceasing to trade or suspends payment of its invoices and/or notifies any of its creditors that it is unable to meet its debts or that it is about to suspend payment of its debts or convenes, calls or holds a meeting of its creditors or being an individual trader commits an act of bankruptcy or is adjudicated bankrupt or makes any composition or deed or scheme or arrangement with his creditors or being a body corporate convenes, calls or hold a meeting for the purpose or going into liquidation or any act analogous to the above (other than for the purpose of reconstruction or amalgamation) by the making of an order or the passing of a resolution for winding up then then full price of any Goods delivered shall be immediately payable, notwithstanding any previous arrangement to the contrary and the Company shall have the right without prejudice to any other rights and remedies available to it to cancel and/or suspend deliveries to the Customer and/or determine the rights of the Customer under condition 9 herein and/or by notice in writing to the Customer determine the Contact.

## 14. FORCE MAJEURE

14.1 If the commencement, continuation or complete performance by the Company of its obligations under this contract is prevented, hindered, delayed or rendered uneconomic by reason of force majeure then the Company shall not be liable to the Customer for

any loss or damage incurred or sustained by the Customer as a result.

14.2 For the purposes of this clause 14, the term "force majeure" shall include any factors affecting the performance of the contract attributable to acts, events, non-happenings, omissions or incidents beyond the reasonable control of the Company, and in particular, (but without limiting the generality of the foregoing) to the following namely: strikes, lockouts, riots, civil commotion, war, state of national emergency of government action, trade dispute or labour disturbance, accident, break-down of plant or machinery, difficulty or increased expense in obtaining workmen material or transport, fire, explosion, storm, flood, earthquake or other natural physical disaster, act of God or circumstances affecting the supply of the Goods (or of the raw materials therefore) by the Company's normal source of supply or the delivery of the Goods by the Company's normal route or means of delivery.

## 15. WAIVER

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver to any such rights nor operate so as to bar the exercise or enforcement thereof at any time thereafter.

## 16. NOTICES

Any notice hereunder shall be deemed to have been given if sent by prepaid, first class post, or facsimile to the party concerned as its last known address. Notice sent by first class post shall be deemed to have been given 7 days after despatch and notices sent by facsimile shall be deemed to have been given on the date of despatch, provided that a notice received or deemed to be received in accordance with this clause 16 on a day which is not a normal business day (being a day when banks in the United Kingdom are open for business or after 5p.m. on any normal business day), shall be deemed to be received on the next following normal business day. For the avoidance of doubt, notices under this clause 16 shall not be valid if delivered by e-mail.

## 17. CONSTRUCTION

All contacts made with the Company shall be governed and construed according to the laws of the United Kingdom and the parties hereby submit to the exclusive jurisdiction of the courts of the United Kingdom.

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