

**CROPWELL BISHOP CREAMERY LIMITED**

**PURCHASE TERMS**

**1. GENERAL**

1.1. Every purchase of Goods or Services by us shall be subject to these Terms and Conditions ("Conditions"). Any conditions other than these Conditions including any special conditions of purchase applicable to this Order are expressly excluded unless they are signed electronically or by hand by our authorised representative as set out in Clause 3. By manufacturing or delivering Goods or supplying Services you will be deemed to have accepted these Conditions.

**2. DEFINITIONS**

2.1. In these Conditions:

"Conditions" means the Terms and Conditions of Purchase set out below;

"Order" means any Order we place for Goods and/or Services;

"the Goods" means the Goods referred to in any Order or materials supplied in the course of providing Services;

"our Purchasing Protocol" means any protocol for the supply of Goods or Services which we issue from time to time;

"Services" means any services described in an Order or forming part of an agreement or otherwise supplied to us.

2.2. Any reference to a statute shall include reference to the statute as amended or re-enacted from time to time and to any regulations, codes of practise or orders made under it.

**3. AUTHORISATION OF ORDERS**

3.1. Only our duly authorised representative, acting in accordance with our Purchasing Protocol has authority to place, alter, amend an Order or these Conditions or to give consent or authority required by these Conditions and then only in writing.

#### **4. PRICES**

- 4.1. The price stated on the Order is fixed unless we agree otherwise in writing. The price includes packaging and delivery to our required delivery point. The price shall be exclusive of any Value Added Tax but inclusive of all other charges.
- 4.2. If we agree the price is not fixed then you must give us at least 4 weeks' prior written notice of any intention to increase the prices and any increase can only be applied to an Order which had not been placed at the date of notification. We will not be bound to purchase any Goods or Services from you after a price increase unless we choose to do so.

#### **5. PAYMENT AND INVOICING**

- 5.1. We will pay the full value of the invoice providing the invoice quotes the Order number and your delivery note number, and providing the Goods and/or Services comply fully with the Order.
- 5.2. We may set off any claim we have against you and any amount you owe us at any time against any amount which we owe you.
- 5.3. If any sum under this Agreement is not paid when due then you will be entitled to charge us interest at 2% per annum over the Barclays Bank Plc's base rate from time to time. You are not entitled to suspend deliveries of any Goods or the performance of any Services as a result of any sums being outstanding.

#### **6. PACKAGING**

- 6.1. The Goods will be packaged in accordance with our Purchasing Protocol at no extra cost to us. We will not be required to return any packaging materials.

#### **7. DELIVERY**

- 7.1. Time shall be the essence of all Orders, both for the supply of Goods and Services. All deliveries must be made in accordance with our Purchasing Protocol.
- 7.2. Goods shall be delivered at your own risk and expense (including the risk of deterioration of the Goods in transit), adequately protected, carriage paid at the place and on the date(s) specified in the Order.
- 7.3. We will advise you of any short or late deliveries in accordance with our Purchasing Protocol. We retain the right to cancel the Order(s) if you do not deliver the Goods or supply the Services on the date(s) specified in the Order.
- 7.4. Where the Goods and/or Services are to be delivered in instalments, the Order will be treated as a single contract and not separate contracts, but if you fail to deliver any one instalment, we are entitled to treat the whole Order as terminated.

- 7.5. We reserve the right to make alternative delivery arrangements, and claim an allowance equal to any carriage charge including the price of the Goods.
- 7.6. We reserve the right to cancel or postpone delivery of any Order
- 7.7. If you do not deliver the Goods or perform the Services on the due date then, without affecting any other right which we may have, we may:
  - 7.7.1. cancel the Order in whole or in part;
  - 7.7.2. refuse to accept any subsequent delivery of the Goods or performance of the Services which you may attempt to make;
  - 7.7.3. recover from you any expenditure reasonably incurred by us in obtaining substitute Goods or Services from another supplier/provider; and
  - 7.7.4. claim damages for any additional costs, loss or expense incurred by us which are in any way attributable to your failure to deliver the Goods or perform the Services on the due date.
- 7.8. We may reject any Goods delivered which are not in accordance with the Order and we will not be deemed to have accepted the Goods until we have had at least 7 days to inspect them following delivery. We shall also have the right to reject the Goods as though they have not been accepted for 7 days after any latent defect in them becomes apparent, or where the Goods are supplied in bulk, 7 days after the date upon which we have broken open the packaging and been able to inspect the Goods properly. We may return the rejected Goods to you at your cost.
- 7.9. You shall supply us in good time with any instructions or other information required to enable us to accept delivery of the Goods or to operate them including operating manuals.

## 8. **RISK AND OWNERSHIP**

- 8.1. Property and risk in the Goods shall normally pass to us on delivery to our premises, except where the Goods or any part of them are ready for delivery but you retain the Goods pending delivery instructions. Where this is the case, the property in the Goods shall pass to us when you notify us that they are ready for delivery but the risk in the Goods shall remain with you until actual delivery has taken place.
- 8.2. You shall insure the Goods against loss or damage until they have been delivered to us.
- 8.3. In the case of Services to be performed on land or premises owned or occupied by us, any material supplied in connection with them shall be at your sole risk and responsibility until completion of the Services.

**9. QUALITY AND SPECIFICATION**

- 9.1. The Goods and/or Services which you supply must be fit for the intended purpose, comply with all statutory requirements and regulations, be free of defects and be of good quality and must, in any case, conform with the specifications, location of manufacture, origin, samples, drawings or other descriptions which have been designated by us or which will otherwise have been agreed. If requested, you will provide us with the necessary information as to the manufacture, constituents and storage of the Goods. We will also have the right to inspect your manufacturing, inspection or testing facilities and processes and to take samples to ensure that the Goods conform, in every respect, to your contractual obligations but this right shall not affect your liability to ensure that the Goods do conform with such obligations.
- 9.2. The Services shall be performed by appropriately qualified and trained personnel with due care and diligence, and to such high standard of quality as is reasonable for us to expect in all the circumstances.
- 9.3. Where applicable you shall at our request procure the assignment of the benefit of any manufacturer's warranty, guarantee or indemnity given to you and until such an assignment is made, will account to us for any such benefit obtained.

**10. TESTING AND CONFORMANCE**

- 10.1. You will maintain or, where necessary, establish and maintain such quality control procedures and testing and inspection measures as is required to ensure the Goods and/or Services comply with the Order and any testing requirements which we require but at any time prior to delivery of the Goods or performance of the Services we shall have the right to inspect and test them at all times, either by ourselves or by an independent expert.
- 10.2. If from the results of any such inspection or testing we believe the Goods and/or Services do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by us, we may require you to immediately take such action as is necessary to ensure that they do conform. In addition we may require to witness further testing and inspection. Delivery of the Goods to us, our inspection or failure to inspect the Goods and/or our signature on any delivery note shall not constitute or imply acceptance of the quality or standard of the Goods. Notwithstanding any such inspection or testing, you shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect your obligations under this Agreement.

- 10.3. You shall, as requested by us, supply certified copies of records of any inspections, analysis and tests carried out on the Goods or on your manufacturing facilities free of charge.
- 10.4. Any characteristic, performance, origin, or specification which has been stipulated in any tender or literature and any specifications or other requirements stipulated in the Order are of the essence. You will consult with us before making any change or modification to the specification or origin of the Goods (including, without limitation, food ingredients, raw materials, wrapping, packaging) or any tooling associated with the Goods as found necessary during manufacture. We shall not be obliged to accept any change or modification, nor Goods supplied which incorporate such change or modification.

## 11. **WARRANTY**

- 11.1. Without prejudice to any rights that we may have by statute, common law or otherwise, if within 12 months after the Goods and/or Services have been put into service any defect in the Goods and/or Services shall be discovered or arise in the normal course of usage, you will remedy the defect either by replacement or repair at your own expense and compensate us for any losses. You will not have the right to reject any claim made in respect of any defect arising within this Warranty period on the basis that the complaint was made after the expiry of the Warranty period.
- 11.2. The provisions of this Condition shall apply to any Goods which are replaced or repaired and shall be effective from the date the replacement or repaired Goods are delivered to us, but shall not prejudice any of our rights resulting from any defects in the Goods. If in the case of Goods you give your own specific Warranty or Guarantee in terms not less favourable than this Condition 11, then we shall accept such Warranty or Guarantee in lieu of Condition 11.

## 12. **DETERIORATION OF GOODS**

- 12.1. If the Goods are perishable or have a life expectancy of a fixed duration or if there are any circumstances known to you which would adversely affect the lifespan of the Goods, you will notify us immediately in writing of all such necessary and appropriate information

## 13. **REMEDIES**

- 13.1. Without limiting any other remedy which we may have, if any Goods are not supplied or the Services are not performed in accordance with the Order, then we shall be entitled (whether or not any part of the Goods and/or Services have been accepted by us);
  - 13.1.1. to rescind the Order;
  - 13.1.2. to reject the Goods (in whole or in part) and return them to you at your risk and cost on the basis that you will give us the full refund for these Goods;
  - 13.1.3. to refuse to accept any further deliveries of Goods or the provision of any further Services but without any liability to you and cancel any other Orders;
  - 13.1.4. to carry out at your cost any work necessary to make the Goods and/or Services comply with the Order;
  - 13.1.5. to claim such damages as may have been sustained as a result of your breaches of the Order;
  - 13.1.6. to require you at your cost to repair the Goods or to supply replacement Goods and/or Services in accordance with the Order within 7 days; or
  - 13.1.7. at our sole option, and whether or not we have previously required you to repair the Goods or supply any replacement Goods, to treat the Order as discharged by your breach and require the repayment of any part of the price which we have paid.
  - 13.1.8. We may return to you at your risk and expense any rejected Goods or any Goods you have already delivered which we cannot use because you have not delivered the balance of the Goods.
- 13.2. You will comply immediately with any directions we issue for the destruction and disposal of any rejected, returned or unused Goods, which bear any distinguishing marks associating the Goods as having been produced for us.

#### 14. **FORCE MAJEURE**

We shall not be liable to you for failure to accept delivery of the Goods or supply of Services resulting from any act of God, Government action, war, riot, hostilities (whether war be declared or not), armed conflict, terrorist attack, terrorist activity, nuclear, chemical or biological contamination, sonic boom, civil commotion, invasion, revolution, malicious damage, compliance with any law or Government order, rules and regulational direction, accident, power or utility failure, interruption of power or utility, breakdown of plant, apparatus or machinery, fire, flood, storm, disease, epidemic, default of suppliers or sub-contractors, difficulties or increased expenditure in obtaining raw materials, labour, fuel, parts or

machinery or import or export regulations or embargos, strike, lock-out or other industrial dispute, or cause beyond our reasonable control.

**15. ASSIGNMENTS AND SUB-CONTRACTING**

You are not entitled to assign, transfer or sub-contract the Order or any part of it to any third party without our written consent.

**16. CONFIDENTIALITY**

16.1. We will both regard any Order, its substance and any information we receive about the other's confidential business affairs, plans or processes as confidential between us and will not disclose or publicise any information relating to it to any third party for any reason without the other's prior written consent.

16.2. You will not use our name or other identity for advertising or publicity purposes without our prior written consent.

16.3. You will not copy, publicise or provide to any third party any drawings, patents, specifications, tooling of any type, written instructions, and other technical information supplied by us or produced by you at our cost for the purpose of an Order. All such materials to remain our property and you will keep them safe, in good condition, properly stored and insured. You shall return them to us on demand free of charge. You will not amend or modify any such materials except on our written instructions.

16.4. You will only provide our confidential information to your employees, agents and sub-contractors (if any) if they need to have such information and provided you have made them aware of these confidentiality obligations and require them to enter into the same obligations. You will use all reasonable endeavours to prevent any unauthorised disclosure or use of such confidential information by any of them and will report any disclosure of confidential information to us immediately.

**17. INTELLECTUAL PROPERTY**

17.1. You warrant that the sale or use of the Goods and/or Services will not infringe any patent, trademark (whether registered or not), trade name, registered design, copyright, unregistered design right or other intellectual property right belonging to any third party. You indemnify us against all loss, damage, cost, expenses, claims and proceedings which we may suffer or incur by reason of any breach of this warranty.

- 17.2. You will not apply for any letters, patent or registered design for Goods supplied against our specifications, drawings, samples or descriptions.
- 17.3. Upon payment of the price (or in the case of cancellation, the passing of property) you assign to us with full title guarantee the entire right, title and interest in or on any copyright and right of the nature of intellectual property throughout the world which you own and for the full term of such intellectual property arising from your performance of this Order and further you waive all moral rights relating to such intellectual property so far as you may lawfully do so.

## **18. DESIGNS, DRAWINGS, TOOLING, ETC.**

- 18.1 All tools, plates or other materials supplied or paid for by us are our exclusive property and shall not be used by you for any purpose other than performance of your obligations under this Agreement, and shall not be scrapped or otherwise disposed of without our permission in writing.

## **19. INSURANCE AND INDEMNITY**

- 19.1. You shall indemnify us in full against all direct, indirect, or consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by us, either within or outside the United Kingdom, as a result of or in connection with :
  - 19.1.1 defective workmanship, quality or materials;
  - 19.1.2. breach of any of these Conditions or any terms of an Order;
  - 19.1.3. an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the goods;
  - 19.1.4 any claim made against us in respect of any liability, loss (including fines and penalties imposed by customers), damage, injury, cost or expense sustained by our employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the goods as a consequence of your direct or indirect breach or negligent performance or failure or delay in performance of the terms of the contract.
- 19.2. At all times you will keep in force with a reputable insurance company the following insurances at appropriate levels of cover per incident and at no less than the levels set out in this clause such cover to be in place for the duration of this contract and for the appropriate limitation periods so that all claims made are covered by insurance and you will provide to us with evidence of such insurance within 7 days of any request to do so: Product Liability £2million, Employers Liability £5 million, Public Liability £5 million..



19.3. You will hold the benefit of any insurance claim or any monies paid under it on trust for us.

## **20. TERMINATION**

20.1. We may cancel the Order and therefore terminate the Contract in whole or in part only by giving you notice at any time before delivery or performance. You shall then immediately stop all work on the Contract and we shall pay you a fair and reasonable compensation for work in progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

20.2. We shall have the right at any time by giving you written notice, to terminate the Order immediately if:

20.2.1. you make any voluntary arrangement with your creditors or become subject to an administration order or documents are filed with a court of competent jurisdiction for the appointment of an administrator or administrative receiver of yours or notice of intention to appoint an administrator or administrative receiver is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or you become bankrupt or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

20.2.2. an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets; or

20.2.3. you cease or threaten to cease, to carry on business; or

20.2.4. you shall suffer any analogous proceedings under foreign law; or

20.2.5. we reasonably apprehend that any of the events mentioned in Clauses 20.2.1 to 20.2.4 is about to occur in relation to you and we notify you accordingly; or

20.2.6. you commit a breach of any of the terms and conditions of the Contract

20.3. The termination of the Order, however arising, will not affect our other rights and duties accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **21. GENERAL**

- 21.1. Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of the contract and/or Order pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 21.2. No waiver by us or any breach of the Order or contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision and no failure to exercise or delay in exercising any right or remedy under the contract or order shall constitute a waiver of that right or remedy.
- 21.3. If there is a dispute between you and us, we both agree that the Courts of England and Wales will be the only courts with the power to deal with the dispute and that English law will apply.

## **22. BRIBERY AND ANTI-CORRUPTION**

- 22.1. You shall comply fully at all times with all applicable laws and regulations, including but not limited to the Bribery Act 2010.
- 22.2. You warrant that you will not, and covenant that you will not, in connection with this contract or Order, engage in an act of bribery which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010.
- 22.3. We shall be entitled to terminate this contract and any Order immediately and to recover from you the amount of any loss resulting from such termination if you are in breach of Clauses 22.1 and 22.2 and if you or any officer or employee of yours shall have engaged in any act of bribery or any person acting on behalf of yourselves in connection with this contract or Order whether with or without the knowledge of yourselves shall have engaged in any act of bribery.

Issue Date: 11/04/16 Issue No: 2/IMS