

Volac Milk Replacers Limited Standard Terms and Conditions of SALE or CONTRACT

1 INTERPRETATION

1.1 In these Terms and Conditions:

- 1.1.1 The "**Company**" means Volac Milk Replacers Limited whose registered office is at 50 Fishers Lane, Orwell, Royston, Hertfordshire, SG8 5QX.
- 1.1.2 The "**Buyer**" means the company, partnership, other legal entity, body or natural person whose order for the Goods is accepted by the Company.
- 1.1.3 The "**Goods**" means the products which the Company is to supply in accordance with these Terms and Conditions.
- 1.1.4 An "**Order**" means an order for Goods entered into by the Company and the Buyer in accordance with paragraph 2.1 below.

2 BASIS OF SALE

- 2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Terms and Conditions, which apply to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Company.
- 2.3 The Company's employees or agents are not authorised to make any representations or warranties concerning the Goods and the Buyer acknowledges that it has not relied on any representation or warranty not set out in these Terms and Conditions.

3 TIME

- 3.1 Any period or times stated for collection by the Buyer at the Company's Premises or for delivery to the Buyer are estimates only. The Company shall use reasonable endeavours to meet any such period or times but the Company accepts no responsibility for direct or indirect loss or damage of whatever nature resulting from reasonable delays. Time shall not be of the essence in respect of any period or times for collection or delivery.
- 3.2 Where Goods are to be collected/delivered in instalments, any failure by the Buyer to comply with these Terms and Conditions will entitle the Company to withhold further instalments.

4 PRICES AND TERMS

- 4.1 Prices and terms of sale are as per the Company's price list ruling at the time of delivery or collection (as applicable) or as otherwise agreed in writing by the Company. Payment of invoices in respect of the Goods shall be made within 28 days of the date of the invoice save where otherwise agreed in writing

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by the Company. If the Buyer fails to comply with the relevant terms of payment the Company has the right to:

- 4.1.1 terminate the relevant Order without prejudice to its rights hereunder; and/or
- 4.1.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of, unless otherwise specified on a particular price list or quotation, 4% above National Westminster Bank Base Rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

- 4.2 All prices payable are exclusive of VAT and other applicable sales, import or export taxes or duties, bank charges, and in the case of export sales any letter of credit charges, which shall be payable by the Buyer in addition.
- 4.3 The Buyer shall make all payments due to the Company in full without any deduction by way of set-off, counterclaim or otherwise.

5 EXPORT SALES

- 5.1 In any case where Goods are sold on the basis of a particular Incoterm or other international trade term, that Incoterm (unless otherwise stated, interpreted in accordance with the latest version of Incoterms published as at the date the relevant Order is agreed) or international trade term shall apply to the Order except to the extent inconsistent with any of the provisions contained in these Terms and Conditions.
- 5.2 The Company reserves the right to require that the price of the Goods shall be secured by an irrevocable Letter of Credit satisfactory to the Company established by the Buyer in favour of the Company immediately upon receipt of the Company's order acceptance and confirmed by a United Kingdom bank acceptable to the Company. The Letter of Credit shall be for the price payable for the Goods inclusive of any tax or duty payable to the Company and shall be valid for a time agreed between the Buyer and the Company. The Company shall be entitled to payment upon presentation to such United Kingdom bank of the document specified by the Company.
- 5.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 5.4 Unless otherwise agreed in writing between the Buyer and the Company and subject to all other terms of these Terms and Conditions, the Goods shall be delivered Free Carrier (FCA Incoterms) and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

6 SPECIFICATION

- 6.1 The Company reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.

7 USE OF THE GOODS

- 7.1 The Buyer shall use the Goods only in accordance with any instructions set out on or in any packaging, labelling or documentation provided with the Goods or otherwise made available to the Buyer by the Company. In particular, the Buyer shall not use any Goods or knowingly permit any Goods to be used

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beyond any applicable use-by date or that have not been stored in accordance with any relevant instructions.

8 DESPATCH AND DELIVERY

- 8.1 In cases where Goods are to be delivered by the Company to the Buyer or collected by the Buyer from the Company within a specific period and where the Buyer cannot accept delivery or effect collection in the said period the Company may, at its discretion either (i) store the Goods and take all reasonable steps to prevent their deterioration until their actual delivery or collection and the Buyer shall be liable to the Company for the cost including insurance of its so doing; or (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price payable by the Buyer or charge the Buyer for any shortfall below such price. This provision shall be in addition to, not in substitution for, any other payment or damages for which the Buyer may become liable in respect of his failure to take delivery or collect at the appropriate time.
- 8.2 Where requested by the Company, the Buyer shall provide at its own expense adequate and appropriate equipment and manual labour for loading the Goods on collection from the Company or for unloading the Goods upon delivery by the Company.
- 8.3 No Order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of cancellation.

9 PROPERTY AND INSURANCE

- 9.1 The risk of the Goods will pass to the Buyer on delivery by the Company or on collection by the Buyer (as applicable). Thereafter the Buyer shall be responsible for the satisfactory care and protection of the Goods until title to the Goods passes in accordance with paragraph 9.2 below and for such period shall:
- 9.1.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - 9.1.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 9.1.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price;
 - 9.1.4 notify the Company immediately if the Buyer becomes subject to any of the events listed in paragraphs 14.1.2 or 14.1.3; and
 - 9.1.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 9.2 Notwithstanding delivery or collection (as applicable) and the passing of risk, title to the Goods will pass to the Buyer only when the purchase price and all other sums owed by the Buyer to the Company are paid in full and received by the Company in full. If, notwithstanding anything else contained in these Terms and Conditions and for whatever reason, the Company does not receive such sums owed, then the Buyer shall remain liable to pay such sums owed.

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- 9.3 Any re-sale of the Goods before title has passed in accordance with paragraph 9.2 must be made in the ordinary course of business and at full market value, in which case title to the Goods will pass to the Buyer immediately before the re-sale occurs.
- 9.4 In the event the Company reasonably apprehends that the Buyer is insolvent or otherwise unable to pay its debts or is about to become so, the Company and its authorised agents and representatives shall have the right of access to the property of the Buyer in order to identify or recover any Goods in the possession of the Buyer for which the Company has not been paid in full. Prior notice shall not be required but any such visit will only be made within reasonable business hours.

10 GOODS DAMAGED / LOST IN TRANSIT

- 10.1 The Company shall not be liable for any loss or damage of whatever nature arising from non-delivery of the Goods but the Company will replace or repair free of charge any goods damaged or lost in transit (excluding any transit from the Company's store in respect of goods collected from the Buyer or where risk in the Goods has otherwise passed to the Buyer before the loss or damage occurs), or make up an incomplete delivery provided the Buyer gives the Company notification in writing of such loss, damage or incomplete delivery within 72 hours of delivery.

11 WARRANTY

- 11.1 Subject to paragraph 11.2, the Company warrants that at the time of collection by, or delivery to the Buyer, as appropriate, the Goods will conform to the provisions of any applicable acts in force and be suitable for the purpose for which they were sold as set out in the Company's published literature.
- 11.2 Other materials and equipment: With respect to Goods manufactured by a third party, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to it by the manufacturer. Details of such warranties are available on request.
- 11.3 Safety of Products: It is hereby agreed between the Company and the Buyer in respect of the Goods that the safety of any product as defined in the Consumer Protection Act 1987 (as amended from time to time) ('the 1987 Act') shall be such safety as the reasonable skill, care and diligence on the part of the producer thereof (or on any relevant party) can obtain.
- 11.4 The Company hereby agrees that in the event of a breach of any of paragraphs 11.1 to 11.3 it will at its sole option either (i) exchange the Goods in question for replacements of the same; or (ii) make good the defects in the materials and/or workmanship of the Goods in question. The remedies in this paragraph 11.4 shall be the Buyer's sole remedies in the event of any breach of the warranties above.
- 11.5 All other warranties express or implied are excluded to the fullest extent permitted by law.

12 LIMITS OF LIABILITY

- 12.1 The Buyer's private rights and the Company's defence under the 1987 Act are each fully preserved.
- 12.2 Subject to paragraphs 12.3 and 12.5 and apart from any liability the Company may have to the Buyer under the 1987 Act, any liability of the Company under each Order or otherwise in respect of the Goods is limited to the price paid for the Goods under the relevant Order.

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- 12.3 In the event the limitation of liability in paragraph 12.2 is found to be unenforceable, such liability of the Company shall be limited to the value of the amount paid out in respect of that liability under any applicable insurance policy held by the Company.
- 12.4 Subject to the provisions of paragraph 12.5, in no circumstances shall the Company be liable to the Buyer for any loss of profits, revenue, goodwill, business opportunity or any other direct or indirect financial or economic loss or damage howsoever incurred.
- 12.5 Nothing in these Terms and Conditions shall exclude or restrict the liability of the Company to the Buyer for death or personal injury resulting from the negligent act of the Company, for liability for any fraudulent misrepresentation by the Company or for any other liability that cannot be excluded or restricted by law.

13 PERFORMANCE DATA

- 13.1 Any performance figures quoted or referred to in any specification or other document put out by the Company are estimates only based on assumed conditions, and levels of management, with experience, adequate and efficient users, and proper utilisation of satisfactory materials. All these factors are outside the control of the Company and consequently performance cannot be warranted.

14 TERMINATION

- 14.1 The Company may terminate any Order immediately if:
- 14.1.1 the Buyer commits a material or persistent breach of any provision of these Terms and Conditions and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; or
 - 14.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business, or in connection with any analogous procedure in another jurisdiction; or
 - 14.1.3 the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.2 Any termination of an Order shall be without prejudice to any other rights or remedies that either the Company or the Buyer may be entitled to under these Terms and Conditions or at law. All outstanding payments owed to the Company by the Buyer shall become due upon termination.

15 FORCE MAJEURE AND FRUSTRATION

- 15.1 The Company shall be entitled to cancel or rescind an Order, and in any event shall not be liable for loss or damage, if the performance of its obligations under these Terms and Conditions is in any way adversely affected by any cause whatsoever beyond the Company's reasonable control including but not limited to the default of any subcontract, war, strike, lockout, trade dispute, flood, accident to plant or machinery, shortage of materials or labour.

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16 SEVERANCE

16.1 If any provision or part-provision of these Terms and Conditions shall be held to be unlawful, invalid or unenforceable in whole or in part under any enactment or rule of law, such provision or part-provision shall be severed from these Terms and Conditions and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of these Terms and Conditions which will remain in full force and effect.

17 LAW

17.1 These Terms and Conditions and any Order placed under them shall be governed by and constructed in accordance with English law and each party agrees to submit to the non-exclusive jurisdiction of the English Courts.