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Registered in Scotland – No. 16247
VAT Registration No. – 259 6999 75

TERMS & CONDITIONS OF SALE

These Conditions shall not apply where Cardowan Creameries has entered into a separate written agreement with a Customer governing the relevant sale.

1.0 Interpretation

1.1 In these Conditions, the following words shall have the following meanings:

- Business Day:** means a day other than a Saturday, Sunday, or public holiday in Scotland, when banks in Edinburgh are open for business.
- Customer:** means the person whose order for Goods is accepted by the Company.
- Company:** means Cardowan Creameries Ltd (company number: SC016247), whose registered office is at 49 Holywell Street, Glasgow, G31 4BT.
- Conditions:** means the standard terms and conditions set out in this document and as amended from time to time in accordance with clause 10.9.
- Contract:** means the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions, any special terms specified overleaf, and any Specification.
- Delivery Location:** means the delivery location specified overleaf, or as otherwise agreed.
- Goods:** means the goods that the Company is to supply to the Customer in accordance with this Contract, or as otherwise agreed.
- Insolvent:** means the Customer: (i) is unable to pay its debts as they fall due; or (ii) it, or any item of its property, becomes the subject of: (a) any formal insolvency procedure; (b) any application or proposal for any formal insolvency procedure; or (c) any application, procedure or proposal overseas with similar effect or purpose.
- Price:** means the price of the Goods specified overleaf, or as otherwise notified by the Company.
- Payment Date:** means the payment date specified overleaf or, if no payment date is specified, 30 days from the date of invoice.
- Specification:** means any specification for the Goods that is agreed in writing by the Company and the Customer.

1.2 The headings in these conditions are for convenience only and shall not affect their interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a party includes its personal representatives, successors and permitted assigns.

1.5 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2.0 Basis of the Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.

2.2 An order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer must ensure that its order and any applicable Specification are complete and accurate.

2.3 An order shall only be deemed to be accepted when the Company issues a written acceptance of the order, at which point and on which date the Contract shall come into existence. The Company may accept or reject any order at its sole discretion.

2.4 The Customer waives any right it might have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with terms of this Contract.

2.5 Any samples, descriptive matter, or advertising produced by or on behalf of the Company and any descriptions of the Goods contained in any of the Company's materials (whether digital or otherwise) are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Company shall not constitute an offer. Any quotation by the Company (however made) may be varied, withdrawn or cancelled by the Company at any time prior to acceptance. A quotation is an illustrative estimate only and the price charged under a Contract will be the Price.

2.7 The Company reserves the right to amend any Specification if required by any law or regulatory requirement and/or make any minor modification to the Specification as it determines from time to time.

2.8 The Customer shall: (i) promptly observe and comply with all applicable laws (including, but not limited to, in relation to anti-bribery, modern slavery, prevention of tax evasion, prevention of fraud, and data protection laws); (ii) observe and comply with the policies, procedures, guidelines, instructions, requests, and directions of the Company from time to time; (iii) promptly report to the Company any request or demand for any undue financial or other advantage of any kind it receives in connection with this Contract; (iv) not by itself or as by its servants or agents hold itself out to any third party as representing or having any authority to bind the Company; and (v) indemnify, and keep indemnified, the Company and the Company's group from and against any losses, damages, liabilities, costs (including

legal fees) and expenses which the Company and/or its group may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.

3.0 Goods

3.1 The Goods are as described in the Specification (if any) or as described overleaf.

3.2 If the Company prepares the Goods in accordance with the Specification, the Customer must ensure that: (i) the Specification is accurate; (ii) the Specification is provided to the Company in a timely manner; (iii) the Goods prepared in accordance with the Specification will be fit for the purpose for which the Customer intends to use them; and (iv) the Specification will not result in the infringement of any rights of a third party, or in the breach of any applicable law, regulation, or confidences.

4.0 Price

4.1 Subject to clause 4.2 below, the Customer shall pay the Price of the Goods as stated overleaf or as otherwise notified to it by the Company.

4.2 The Company may, by giving notice to the Customer at any time before delivery, increase the Price to reflect any increase in the cost of the Goods that is due to: (i) any factor beyond the Company's direct or indirect control (including, but not limited to, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or (iii) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

4.3 The Price excludes amounts in respect of value added tax or any similar taxes, which the Customer shall additionally be liable to pay to the Company at the prevailing rate at the time of delivery, subject to the receipt of a valid VAT invoice.

5.0 Delivery

5.1 Unless otherwise agreed in writing, delivery of the Goods shall be made by the Company delivering the Goods to the Delivery Location or such other location as agreed between the Company and the Customer in writing.

5.2 Delivery is completed on the arrival of the Goods at the Delivery Location or such other location as the Company and the Customer agree in writing.

5.3 Any dates quoted for delivery in an order or stated overleaf are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by events outside of its reasonable control, the Customer's failure to provide the Company with adequate delivery instructions, any other instructions that are relevant to the supply of the Goods, the Customer's failure to comply with these Conditions, or the circumstances set out in clause 5.4 below.

5.4 The Company may decline to deliver the Goods if: (i) the Company believes that it would be unsafe, unlawful or unreasonably difficult to do so; or (ii) the Delivery Location or such other location as the Company and the Customer agree in writing (or access to it) is unsuitable for the Company's vehicle or is inaccessible by the Company's vehicle. In the event that the Company declines to deliver the Goods due to the reasons set out above, the Customer acknowledges and agrees that the Company shall not be in breach of the Contract.

5.5 Subject to clauses 5.3 and 5.4, if the Company fails to deliver the Goods, its liability shall be limited to the reasonable costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price.

5.6 If one Business Day after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the Price or charge the Customer for any shortfall below the Price.

5.7 If the Customer accepts delivery of the Goods after the quoted delivery time, the Customer agrees that it has no claim against the Company for delay, including (without limitation) indirect or consequential loss or any increase in the Price.

5.8 If the Company delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Company shall make a pro rata adjustment to the invoice for the Goods.

5.9 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall form a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment or the Contract.

6.0 Payment

6.1 The Price shall be paid in full (in cleared funds) in accordance with the credit terms set out overleaf. If no terms are specified, payment must be made within 30 days from the date of the invoice. If the Customer has an approved credit account, the Company may at any time and at its sole discretion without notice withdraw it or reduce the Customer's credit limit or bring forward the due date for payment.

6.2 In the event that the Customer does not have a credit account with the Company, the Company may invoice the Customer for the Goods any time prior to, on, or at any time after the completion of delivery. The Customer shall pay each invoice submitted by the Company: (i) immediately on the date of the invoice; and (ii) in full (in cleared funds) to a bank account nominated in writing by the Company.

6.3 Time of payment in all cases is of the essence.

6.4 The Customer shall not in any circumstances or for any reason whatsoever be entitled to make any deduction or withhold any sum from the Price by way of set-off or counterclaim.



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- 6.5 If the Customer fails to make a payment due to the Company under a Contract by the due date, then, without limiting the Company's other remedies, the Company may: (i) suspend or discontinue future deliveries; (ii) cancel any discount offered to the Customer; (iii) charge the Customer interest at the rate set out in section 6 of The Late Payment of Commercial Debts (Interest) Act 1998 calculated on a daily basis from the due date for payment until payment of the overdue sum, whether before or after any judgment (unless a court orders otherwise); (iv) claim fixed sum compensation from the Customer under s5.A of The Late Payment of Commercial Debts (Interest) Act 1998 to cover the Company's credit control overhead costs; and (v) recover the cost of taking legal action to enforce the Customer's obligation to pay.
- 7.0 **Title and Risk**
- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 5.2.
- 7.2 The Customer must inspect the Goods on completion of delivery. If any of the Goods are damaged or not delivered, the Customer must: (i) inform the Company: (a) in the case of a defect that is apparent on reasonable visual inspection, within 24 hours of completion of delivery; or (b) in the case of a latent defect, within a reasonable time of delivery and immediately upon the latent defect having become apparent; and (ii) give the Company (and any carrier) the opportunity to inspect the damaged or defective Goods (such opportunity to be notified to the Customer and conditioned by the Company in the Company's sole discretion). The Customer acknowledges and agrees that the Company is not liable for damage, destruction, breakages, or shortage, unless notice is given in writing by the Customer to the Company within the relevant time period.
- 7.3 Title to the Goods shall pass to the Customer once the Company has received payment in full and cleared funds for the Goods.
- 7.4 Until title to the Goods has passed to the Customer, the Customer shall: (i) hold the Goods as bailee for the Company; (ii) store the Goods separately from all other material in the Customer's possession; (iii) take all reasonable care of the Goods and keep and maintain them in excellent condition; (iv) insure the Goods from completion of delivery: (a) with a reputable insurer; (b) against all risks; (c) for an amount at least equal to their Price; and ensure the Company's interest is noted on the policy; (v) ensure that the Goods are clearly identifiable as belonging to the Company; (vi) not remove or alter any mark on or packaging of the Goods; (vii) inform the Company immediately if: (a) it becomes subject to, or is likely to become subject to, an event of insolvency; (b) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and/or (c) the Customer's financial position deteriorates, or is likely to deteriorate, so far as to jeopardise the Customer's ability to give effect to the terms of the Contract; and (viii) on reasonable notice permit the Company to inspect the Goods during the Customer's normal business hours and provide the Company with such information concerning the Goods as the Company may request from time to time.
- 7.5 Until title to the Goods has passed to the Customer and subject to clauses 7.6 and 7.7 below, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise), unless the Customer: (i) becomes or is likely to become Insolvent; or (ii) becomes subject to any of the events listed in clauses 7.4(vii)(a), (b), and/or (c).
- 7.6 If the Customer resells the Goods in accordance with clause 7.5: (i) it does so as principal and not as the Company's agent; and (ii) title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 7.7 At any time before title to the Goods passes to the Customer, the Company may: (i) by notice in writing, terminate the Customer's right under clause 7.5 to resell the Goods or use them in the ordinary course of its business; (ii) enter any premises where the Goods may be stored to inspect them and/or reclaim them; and (iii) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 8.0 **Limitation of liability**
- 8.1 References to liability in this clause include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence) or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iv) defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2, the Company's total liability to the Customer shall not exceed the lower of: (i) the Price paid by the Customer in the preceding 6 months; or (ii) £100,000 (One Hundred Thousand Pounds Sterling).
- 8.4 Subject to clause 8.2, the following types of loss are wholly excluded from the Company's liability: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; (vii) indirect or consequential or special losses; and (viii) wasted expenditure (including, but not limited to, costs incurred by the Customer in procuring and implementing replacements for, or alternatives to, Goods).
- 8.5 Subject to clause 8.2, the Company shall have no liability for a claim unless the Customer notifies it of its intention to make a claim within the Notice Period, provided that: (i) such notice is made in writing and identifies the grounds for the claim in full detail; and (ii) the Customer reasonably responds to any requests for further information in respect of the claim. The "Notice Period" shall start on the date the Goods were delivered to the Customer and shall expire 36 months following that date.
- 9.0 **Cancellation and Suspension**
- 9.1 The Customer may not cancel any Contract (or any part thereof) unless agreed in writing by both the Customer and the Company.
- 9.2 The Company may suspend or cancel any Contract (or any part thereof) with immediate effect by giving written notice to the Customer if: (i) the Customer fails to pay the Company any monies when due, whether under this Contract or otherwise; (ii) the Customer becomes Insolvent; (iii) the Customer fails to perform, or comply with, any of its obligations under a Contract; or (iv) the Company is of the opinion that the Customer is about to, or is likely to, be subject to any of the events listed in clauses 7.4(vii)(a), (b), and/or (c).
- 10.0 **General**
- 10.1 Assignment and other dealings: (i) the Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract; and (ii) the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 10.2 Notices: (i) any notice given under or in connection with the Contract shall be in writing and shall be: (a) delivered by hand or pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) sent by email to the addresses (or an address substituted in writing) as set out in the Contract; (ii) any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am UK time on the second Business Day after posting; or (iii) if sent by email, 24 hours after the time of transmission unless the sender has received an "out of office" notification and/or a notification that such email has not been successfully delivered, and provided that if deemed receipt occurs before 9:00am UK time on a Business Day the notice shall be deemed to have been received at 9:00am UK time on that day, and if deemed receipt occurs after 5:00pm UK time on a Business Day, or on any day which is not a Business Day, the notice shall be deemed to have been received at 9:00am UK time on the next Business Day, and in providing such transmission it shall be sufficient to prove that the email was sent to the email address of the recipient set out in the Contract and that dispatch of the transmission from the sender's external gateway was confirmed; and (iv) this clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 10.3 Severance: if any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause the Company and the Customer shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 10.4 Waiver: (i) except as set out in the Contract a waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy; and (ii) a failure or delay by the Company to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.5 No partnership or agency: nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Company and the Customer, constitute either to be the agent of the other, or authorise either to make or enter into any commitments for or on behalf of the other.
- 10.6 Announcements: neither the Company nor the Customer shall make or release any statements or announcements to the press, other media or any third party regarding the conclusion of, terms of or termination of this Contract unless such statements or announcements have been approved by the other.
- 10.7 Entire agreement: the Contract constitutes the entire agreement between the Company and the Customer. Both the Company and the Customer acknowledge that in entering into the Contract they do not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. The Company and the Customer agree that they have no claim for any statement, representation, assurance or warranty not set out in the Contract.
- 10.8 Third party rights: Save for the Company's group, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.9 Variation: No variation of the Contract shall be effective unless it is agreed in writing and signed by both the Company and the Customer (or their authorised representatives). Notwithstanding the foregoing, the Company may vary these Conditions from time to time with immediate effect on written notice to the Customer (the Customer's continued receipt of the supply of Goods shall constitute the Customer's acceptance of the variation).
- 10.10 Governing law and jurisdiction: the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England, and the Company and the Customer irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.



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