

BARRY CALLEBAUT PURCHASE CONDITIONS

1 APPLICATION OF TERMS

- 1.1 These general purchase conditions ("Purchase Conditions") shall apply between the Barry Callebaut Group entity specified on the Purchase Order (as defined below) (the "Purchaser" or "BC") purchasing any products and/or services (collectively, the "Goods") from the supplier of such Goods (the "Seller") pursuant to BC's standard order form ("Purchase Order"). These terms shall govern any Purchase Order accepted and/or executed by the Seller (the "Contract") to the entire exclusion of the Seller's general terms and conditions and any other terms and conditions which the Seller purports to apply under any document and any terms and conditions which may otherwise be implied by trade, customer practice or course of dealing. A variation to these Purchase Conditions shall have no effect unless expressly agreed to in writing by the Purchaser.
- 1.2 Seller shall be deemed to have accepted a Purchase Order expressly by giving notice of acceptance, or impliedly by fulfilling the Purchase Order, in full or in part. The express or implied acceptance of a Purchase Order shall constitute acceptance of these Purchase Conditions and the specific conditions set out in the Purchase Order.
- 1.3 All correspondence and documents including advice notes, packing notes and invoices shall bear the Purchase Order reference number.

2 PRICE AND INVOICING

- 2.1 The price of the Goods shall be stated in the Purchase Order, and unless expressly indicated otherwise shall be firm and final, and exclusive of any taxes which the Seller is under the legal obligation to collect and remit, but inclusive of all other charges, duties, fees and levies. .
- 2.2 No extra charges or variation in the price shall be accepted by the Purchaser.
- 2.3 The Seller shall invoice the Purchaser or the Barry Callebaut entity specified by the Purchaser upon, but separately from, dispatch of the Goods to the Purchaser. The invoice shall contain the relevant Purchase Order number and be denominated in the currency indicated in the Purchase Order. Invoices that do not comply with these requirements shall be returned unpaid to the Seller.

3 PAYMENT

- 3.1 The Purchaser shall pay all undisputed invoices for Goods within 60 days after the end of the month in which the relevant invoice is submitted based on receipt of the Goods, the documents agreed to be delivered with the same and a correctly issued invoice, unless otherwise agreed in writing.
- 3.2 Without prejudice to any other right or remedy, the Purchaser reserves the right to offset counterclaims.
- 3.3 Payment does not constitute acknowledgement that the Goods were provided in accordance with the Contract.

4 VARIATION TO THE GOODS

- 4.1 The Purchaser may at any time request changes to the quantity, specification or design, the date or place of delivery, method of packaging or delivery, or the performance of the Contract. If any such change increases or decreases the cost of or time required for the performance of the Contract, the price shall be adjusted as applicable and a reasonable adjustment shall be made to the time of delivery or date of performance provided that no increase in the price or extension of time for delivery or performance shall be made unless agreed in writing by the Purchaser.
- 4.2 The Seller shall provide prior written notice to the Purchaser of actual or intended material changes in its raw materials, manufacturing methods or packaging methods since the Purchaser last purchased or approved similar Goods.

5 SUSPENSION

The Purchaser may suspend the Contract in whole or in part at any time, and shall pay the Seller for the related costs arising from the suspension provided that the Purchaser has provided prior written approval for such costs to be incurred.

6 QUALITY AND WARRANTY

- 6.1 The Goods supplied to the Purchaser shall fully comply with the Purchase Order and the specifications agreed therein.
- 6.2 The Seller shall comply with food industry standards, with safety regulations and quality assurance systems as required and approved by the Purchaser. The Seller warrants the full traceability of the Goods, components or parts thereof and shall provide any information reasonably required in relation to the traceability of the Goods, components or parts to the Purchaser upon request.
- 6.3 The Seller further warrants and represents that:
- (a) the Goods shall be free from any defects in design, materials and/or workmanship;
- (b) the Goods are of satisfactory quality and fit for the purpose for which they are required; and
- (c) any services shall be provided with the exercise of professional care and skill.
- 6.4 If any Goods are found by the Purchaser to be defective within the longer of 24 months from the date on which the Goods are first used by the Purchaser or 30 months from the date of the delivery, the Seller shall, at the sole option of the Purchaser, promptly and at its expense, either remedy any defective Goods or supply replacement Goods, and carry out any other necessary work to ensure that the terms of the Contract are fulfilled. Replacement Goods and replacement parts supplied as well as services rendered by the Seller shall also be subject to the warranties set out herein, provided that the Seller shall not be responsible for normal wear and tear of such parts.
- 6.5 The above warranties are not affected by inspection, delivery, acceptance, use of the Goods or payment. The Seller agrees that the Purchaser may pass to its non-retail customers and/or users all warranties relating to the Goods.
- 6.6 Should the Seller fail to repair the defect or replace the Goods in accordance with article 6.4 the Purchaser may, at its discretion:
- (a) rescind the Contract;
- (b) reject the Goods (in whole or in part) and return them to the Seller at the Seller's risk and cost for a full refund of the purchase price and any related costs; or
- (c) refuse any further deliveries of the Goods; or
- (d) carry out any work necessary to render the Goods compliant, at the Seller's expense; and
- (e) to claim such damages caused by the Seller's breach or breaches of the Contract.

7 INDEMNIFICATION

The Seller shall indemnify, defend and hold harmless the Purchaser against all liabilities, costs, expenses, losses or damages whatsoever and howsoever arising that the Purchaser does or will incur or suffer or for which the Purchaser may be liable to third parties all claims or proceedings made, brought or threatened against the Purchaser by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses that the Purchaser does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with the failure of the Seller to supply the Goods in accordance with the Contract.

8 DELIVERY

- 8.1 Deliveries shall be made according to the INCOTERM and at the delivery address specified in the Purchase Order. Deliveries shall be accepted only during normal business hours and unloading shall take place in the Purchaser's presence and at its direction.
- 8.2 Each delivery shall include a detailed delivery note bearing the Purchase Order number, number of packages and their content, and, for partial shipments, the outstanding balance remaining to be delivered.
- 8.3 Partial or earlier deliveries are permitted only with the written consent of the Purchaser.
- 8.4 If the Goods delivered exceed the quantities ordered, the Purchaser shall not be bound to pay for the excess, for which risk shall be and remain with the Seller, and which shall be returnable at the Seller's expense.
- 8.5 Each delivery will be inspected as soon as the normal course of business permits, and accepted if in conformity with the Purchase Order. Receipt of delivery, full or partial payment or use of the Goods shall not constitute acceptance.

- 8.6 All delivery/performance dates contained in the Purchase Order or otherwise agreed upon shall be considered essential to the Purchaser. Should the Seller fail to deliver/perform on the date agreed, the Purchaser reserves the right to:
- (a) refuse to accept and pay for the Goods, or any subsequent delivery;
- (b) recover from the Seller any cost incurred in obtaining replacement the Goods in substitution from another supplier;
- (c) cancel the Contract in whole or in part; or
- (d) claim liquidated damages of minimum 3% of the Contract value per week of delay, up to 15%, and compensation for proven damages exceeding the amount of the liquidated damages. The parties agree that these liquidated damages are a genuine negotiated pre-estimate of the loss that the Purchaser will suffer as a result of the Seller failing to deliver/perform on the agreed date for delivery/performance and will not be regarded as penalty provisions. The Seller waives any right to claim that the liquidated damages are penalty provisions.

9 TITLE TRANSFER, RISK TRANSFER

- 9.1 All Goods supplied by the Seller shall become the Purchaser's property upon payment or delivery, whichever comes first.
- 9.2 The Seller shall bear any and all risk of loss or damage to the Goods until delivery according to the agreed INCOTERMS. For deliveries involving installation, risk shall transfer upon the Purchaser's acceptance of the delivery and installation of the Goods.

10 PACKING

- 10.1 Packing shall be as indicated in the Purchase Order and will effectively protect the goods from any damage whatsoever during shipment, handling and any subsequent storage. The Goods shall be properly labeled, tagged for ease of identification. Packaging is not returnable unless otherwise agreed.
- 10.2 The Seller shall bear the cost of any loss or damage that results from defective packaging.

11 PRODUCT SUPPORT

- 11.1 The Seller will provide, at no additional cost, all present and future instructions relating to the use of the Goods including technical data, publications, modifications and spare parts data, and shall clearly inform the Purchaser of any danger that may arise in connection with the Goods.
- 11.2 Hazardous Goods shall be marked by the Seller with International Danger Symbols and display the name of the material components. All documents must include a declaration of the hazard and the name of the component in English. Such Goods shall be accompanied by emergency information written in English and in the local language of the country of delivery in the form of written instructions, labels, or markings.
- 11.3 At the Purchaser's request, the Seller shall inform the Purchaser of any matter which may affect the Purchaser's exposure to liability on resale of the Goods.

12 INSURANCE

The Seller shall maintain, at its own cost, adequate third party liability insurance (covering bodily injury and property damage) as well as product liability insurance to cover the Seller's liability in respect of any act or default for which it may become liable under the terms of the Contract. Such insurance shall cover no less than £5 million pounds (sterling) for a single event. Seller shall provide a copy of such insurance certificate to BC upon request.

13 COMPLIANCE WITH LAWS AND REGULATIONS

- 13.1 The Seller shall warrant that the Goods comply in all respects with the relevant legal, regulatory or statutory requirements, including the necessary permits.
- 13.2 The Seller shall comply with all legal requirements of the country of delivery, of all countries where Goods may be sold by the Purchaser and all International Agreements relating to the packing, labeling and carriage of the Goods.

14 DISCONTINUANCE OF GOODS

- 14.1 The Seller shall continue production, support and maintenance of the Goods of the same type as described in the Purchase Order and spare parts for the repair or part replacement of such Goods throughout the normal lifetime of the Goods, at a fair and reasonable price.
- 14.2 The Seller shall give the Purchaser not less than twelve (12) months written notice before ceasing production and/or support and maintenance of the Goods, or spare parts for the repair or partial replacement of such Goods.

15 PROVIDED MATERIAL

Materials supplied by the Purchaser for execution of an order shall remain the Purchaser's property even following machining or processing, and shall be used exclusively for the Purchaser's orders. Such materials shall be marked accordingly and stored separately until machined or processed. The Purchaser may require that machining waste, scrap or remaining material, etc. be returned to the Purchaser, or its value deducted from the contract price. The Seller shall keep any such material at its own risk in safe custody.

16 INTELLECTUAL PROPERTY

- 16.1 The Seller warrants that neither the sale nor the use of the Goods will infringe any national or foreign patent, copyright, trade mark, trade name, registered design, or other third party intellectual property right. The Seller will indemnify the Purchaser from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any actual or alleged infringement of any such right or alleged right, and shall at its own expense defend or assist in the defence of any proceedings instituted in that connection.
- 16.2 Intellectual property rights supplied by the Purchaser to the Seller for the manufacture of the Goods shall at all times be and remain the exclusive property of the Purchaser.
- 16.3 All intellectual property rights in or resulting from any design or development work carried out by the Seller at the Purchaser's request in executing a Purchase Order shall vest exclusively in the Purchaser.
- 16.4 The Seller will at its own cost, execute all such documents and do all such acts and things as the Purchaser may request from time to time in order to secure the full right, title and interest of the Purchaser in the intellectual property rights referred to in article 16.3 and procure the irrevocable waiver of all moral rights (and any broadly equivalent rights which may exist in any territory of the world) in such intellectual property rights.

17 CONFIDENTIALITY

- 17.1 The parties shall (a) keep confidential the terms and conditions of the Contract and any confidential information concerning the other party's business and its products (including but not limited to technical or commercial know-how, specifications, invention and processes) disclosed to it in connection with the Contract strictly confidential and (b) not disclose such confidential information to any third party without the disclosing party's prior written consent.
- 17.2 The Seller shall not take photographs of any of the Purchaser's equipment, installation or property without the written consent of the Purchaser.
- 17.3 The confidentiality undertakings contained in this article 17 shall survive the termination or cancellation of the Contract.

18 TERMINATION

- 18.1 The Purchaser may terminate the Contract at any time and for any reason in whole or in part by giving the Seller written notice, whereupon all work on the Contract shall be cease. The Purchaser shall pay to the Seller fair and reasonable compensation for work in progress or completed at the time of termination and subsequently supplied to the Purchaser, but such compensation shall not include loss of anticipated profits or any indirect or consequential loss.
- 18.2 Either party may terminate the Contract in writing at any time with immediate effect and without cost if the other party:
- (a) commits a material breach of any of the terms and conditions of the Contract which cannot be cured, or if curable, is not cured within thirty (30) days after notification thereof;
- (b) becomes insolvent, enters into liquidation or bankruptcy, whether compulsory or voluntary, or has a receiver appointed or enters into an arrangement for the benefit of creditors (save for the purpose of a solvent reconstruction or amalgamation); or
- (c) ceases or threatens to cease to carry on its business.

- 18.3 Any such termination shall not prejudice any rights which may have accrued to either party.
- 19 ASSIGNMENT AND SUB-CONTRACTING**
The Contract shall not be transferred, charged, held on trust, assigned or sub-contracted or dealt with in any other manner by the Seller in whole or in part, without the prior written consent of Purchaser. In any event, the Seller shall remain jointly and severally liable with the assignee or sub-contractor.
- 20 FORCE MAJEURE**
20.1 No party shall be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations, if the delay or failure was due to acts of Gods, explosions, floods, fire or accident, war, terrorism, civil disturbance, import or export regulations or embargoes, or industrial actions (other than industrial action of the workforce of the party seeking to rely on this article 20) ("Force Majeure Event").
20.2 If a party is subject to a Force Majeure Event, such party shall give prompt notice of suspension to the other party stating the date and extent of such suspension and the cause thereof, and resume the performance of such obligations promptly after the cessation of the Force Majeure Event, and notify the other party thereof. If a Force Majeure Event continues for more than sixty (60) days, either party may terminate the Contract with immediate effect.
- 21 MISCELLANEOUS**
21.1 If any provision of the Contract is or becomes invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of the other provisions. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision which as closely as possible corresponds with the economic purpose of such invalid or unenforceable provision.
21.2 The Contract may only be amended or modified in a duly executed document by the Seller and the Purchaser.
21.3 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
21.4 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
(a) neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made by the first party or any other person) which is not expressly set out in the Contract; and
(b) nothing in this article 21.4 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
21.5 Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
21.6 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
21.7 The parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
21.8 The Purchaser's rights and remedies set out in these Purchase Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 22 APPLICABLE LAW AND JURISDICTION**
22.1 The Contract and these Purchase Conditions and any non-contractual obligations arising out of or in connection with the Contract or the Purchase Conditions shall be governed by the law of England and Wales.
22.2 The courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract and these Purchase Conditions (including in relation to any non-contractual obligations).