

TERMS AND CONDITIONS

Dairyfresh SOS Wholesale Terms & Conditions of Supply: Export Orders

The Terms and Conditions shall govern the supply of Products by Dairyfresh SOS Wholesale Ltd to the exclusion of all other terms, conditions, and representations, including any terms or conditions which a Purchaser may purport to apply under any document whatsoever and whenever.

1. Definitions

“Business Days” means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

“Conditions” means these terms and conditions (as may be varied from time to time, where permitted herein).

“Contract” means any contract for the supply of Products between the Supplier and the Purchaser, under these Conditions.

“Documents” means the none-exclusive list of documents in Condition 3, which are the responsibility of the Purchaser.

“Force Majeure Event” means an event, events, circumstances or causes beyond a party’s reasonable control.

“Haulier” means the party appointed by the Purchaser for carriage of the goods from the supplier, or “any other goods” moved to SOS’s premises for consolidation in accordance with these Conditions.

“Interest Rates” means the rates of interest calculated in accordance with Condition 4.

“Products” means products supplied to the Purchaser by the Supplier, pursuant to an order placed by the Purchaser.

“Purchaser” the person, company, firm, or other legal entity placing an order for the purchase of Products from the Supplier

“Purchase Price” means the price of the Products in the Supplier’s price list in force on the proposed delivery date (available from the Supplier on request) or (in respect of Products not included on the Supplier’s price list) as otherwise agreed in writing by the Supplier, and any VAT thereon.

“Supplier” means Dairyfresh SOS Wholesale Limited (registered in England and Wales with company number 08028981).

“VAT” means Value Added Tax or any equivalent tax chargeable in the UK at the rate of 20%, or equivalent Value Added Tax as may be charged at a given rate in any other territory.

2. Export Orders

2.1. Dairyfresh SOS Wholesale’s Incoterms are ex-works only. Risk will pass to the Purchaser and the Supplier shall not be liable for the Products once they have been collected by the Haulier from the Supplier’s warehouse. Any discrepancies or damages must be taken up with the Haulier.

2.2. The Supplier will use reasonable endeavours to supply the Products and, in turn, build pallets to maximum height specified by respective hauliers or freight forwarders. However, the Supplier will not be liable for any retrospective pallet charges or any associated losses, including but not limited to loss of profit and such financial implications shall be assumed by the Purchaser.

2.3. Orders may be subject to an initial 20% deposit upon placing an order and prior to the order being picked when the supplier orders stock specifically to fulfil an export customer’s order.

2.4. Consolidation with third party suppliers can be done at the Supplier’s premises, however, there are additional charges for this service. Please contact the sales office for more information.

2.5. Paperwork for Products coming to the Supplier from third party suppliers must be emailed to sales@soswholesale.co.uk 72* hours prior to the Products being

delivered by the third party prior to loading. If all paperwork is not received before the order is loaded, SOS will not be liable for any demurrage charges.

2.6. Products from third party suppliers must be booked in and must be accompanied with the invoice and other relevant paperwork i.e. dangerous goods notes. Products that do not adhere to the above (72 hours*) or arrive that are not booked in or do not have the correct paperwork will be rejected.

2.7. The Supplier's Incoterms are ex-works only. The Purchaser should check if any special documentation/special instructions are required for exporting to their country prior to placing orders, including (but not limited to) the REX number, EUR1, Country of Origin, heat treated pallets (certificated for heat treated pallets available on request), together with CMR form and details which the Purchaser must obtain from the Haulier. Provision of heat-treated pallets and provision of some documentation will incur additional charges. Please contact the sales office for more information.

2.8. Legal Requirements from HMRC: VAT exempt orders require, two proof of shipments for every export order. This could be a copy of CMR note and a signed delivery note which must be returned on receipt of the Purchaser Order. Failure to supply these 2 proofs of shipment will result in any future orders being charged VAT.

2.9. Local VAT number, EORI, CIF, EU or regional equivalent will be checked for validation on every order prior to the order being processed. Should the validation check show the number as invalid, VAT will be charged on all invoices until investigated. VAT may be refunded once the investigation has been resolved.

2.10. The Supplier must be informed, in writing, if the Purchaser changes its trading methods and de-registers for VAT. The Supplier reserves the right to back date any VAT on invoices if the Supplier becomes aware that the Purchaser has de registered for VAT.

2.11. On Delivery, the Purchaser (or the appointed agent of the Purchaser) MUST sign the back page of the invoice and return this to the Supplier as POD (proof of delivery) (See clause 2.8)

2.12. Some countries have import restrictions on certain goods. It is the responsibility of the Purchaser to ensure all goods are eligible for export to their destinations. Any documentation provided by suppliers for goods to be exported must be verified by the purchaser and is not the responsibility of SOS Wholesale to verify the documentation is correct.

2.13. For all Orders, the Products must be paid for in full before the Supplier will arrange collection of the Products with the Purchaser.

2.14. There is no opportunity to return goods that have left the SOS warehouse even when a Purchaser (or an appointed agent of the Purchaser) not being available to receive goods on an agreed delivery date. There is no option for goods that have left the warehouse to be credited if returned.

2.15. Containers arriving late for loading may not be loaded in time. Any demurrage charges incurred when containers arrive late at the sellers premises will be payable by the Purchaser.

2.16. Outside Transport Deliveries – The supplier can obtain a quotation on behalf of the purchaser for delivery to a UK destination. The purchaser will be responsible for delivery charges in line with the quotation. Delivery quotations are available from the sales office on 0113 513 2325. Refusal of delivery at a UK destination will be the purchaser's responsibility and SOS are not obligated to credit goods that are returned to their warehouse by hauliers.

3. Dangerous Goods

3.9. "Dangerous Goods" or otherwise hazardous goods (by reference to the Dangerous Goods Directive 2008 (Directive 2008/68/EC of the European Parliament and of the Council) received by the Supplier for consolidation without the correct Documents will not be loaded.

3.10. The Purchaser is required to inform the Haulier in advance that there are Dangerous Goods on the loads they are collecting and ensure that the Haulier has the correct Documents on collection from the Supplier's premises. The Purchaser must ensure that the haulier's driver has the appropriate certification/training to collect dangerous goods.

3.11. Dangerous Goods Notes and hazardous goods stickers can be provided however there are additional charges, please contact the sales office for more information.

Any goods that arrive with the Supplier for consolidation, that do not adhere to Conditions 3.1 to 3.3 in respect of goods generally, and Conditions 3.4 to 3.6 in respect of Dangerous Goods, will be rejected and any consequential costs and losses will be assumed by the Purchaser.

4. Documents and Compliance

4.9. It is the responsibility of the Purchaser to ensure all goods are eligible for export to their intended destinations and shall be responsible for ensuring the correct relevant Documents are in place and, where applicable, such Documents have been provided to the Haulier.

4.10. The Supplier shall not be liable for any losses suffered by the Purchaser, in respect of the Products or any consolidated goods, as a result of a failure on the part of the Purchaser to ensure compliance with Condition 4.1. the correct Documents are in place and, where applicable, such Documents have been provided to the Haulier.

4.11. The "Documents" for which the Purchaser is responsible to obtain and ensure the completeness and accuracy of, shall include but not be limited to:

4.3.1. All import licences or permits necessary for the entry of the Products (together with any consolidated goods) into or passage through any territory, including delivery by the Haulier to the Purchaser's territory or the territory of the Products final destination.

These Documents include, but are not limited to:

4.3.1.1. The REX Number,

4.3.1.2. The EUR1 Certificate,

4.3.1.3. The Country of Origin Certificate,

4.3.1.4. The CRM Consignment Note (which the Purchaser must obtain from the Haulier).

4.12. Where the Purchaser requires any Documents from the Supplier which the Supplier does not provide with the Products in the ordinary course, then this may be requested from the Supplier at an additional charge. Please contact the sales office for more information.

Tax

4.13. The Purchaser shall be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Products.

4.14. The Purchaser shall be required to provide a VAT Number equivalent to the territory where the Purchaser is based. The Local VAT number, CIF, EU or regional equivalent will be checked for validation by the Supplier upon each order being placed by the Purchaser. Should the validation check show the number as invalid, VAT will be charged on all invoices until investigated. VAT may be refunded once the investigation has been resolved.

4.15. The Purchaser shall be responsible for ensuring the validity of the VAT Number, and shall indemnify the Supplier for any losses incurred by the Supplier, as a

consequence of any failure by the Purchaser to provide a valid VAT Number

4.16. The Purchaser shall be required to provide two proof of shipment documents, for Products which are exempt from VAT, as is required by Her Majesty's Revenue and Customs. Such proof of delivery may include, but not be limited to, a CRM Consignment Note and a signed delivery note. Any such documents should be returned to the Supplier on receipt of the Products.

4.17. The Supplier must be informed in advance in writing if the Purchaser intends to change its trading methods and intends to de-register for VAT (or local equivalent). The Supplier reserves the right to back date any VAT on invoices the Purchaser de-registered for VAT (or local equivalent).

5. Payment Terms

5.9. The Products must be paid for in full only in GBP Sterling, before the Supplier will arrange collection of the Products with the Purchaser or the appointed Haulier (as the case may be).

5.10. All invoices are due for payment immediately upon placement of the order and are to be paid in cleared funds except where otherwise credit has been granted and alternative payment terms have been specified in writing by the Supplier.

5.11. All monies due from the Purchaser to the Supplier under this Contract are to be paid in pounds sterling and all amounts due under this agreement shall be invoiced in pounds sterling.

5.12. Payment should be made by BACS to the following account details (except where otherwise agreed with the Supplier in writing):

Account name: DAIRYFRESH LTD

Account number: 10437496

Sort Code 090222

BIC: ABBYGB2LXXX

IBAN: GB11ABBY09022210437496

Bank Address: Santander Corporate & Commercial Banking, Sunderland, SR43 4GG

Time for payment shall be of the essence of the Contract.

5.13. Any payment queries should be directed to The Accounts Department, Dairyfresh SOS Wholesale Ltd, 128 West Street, Barnsley S74 9DU. Telephone number 01135132325.

A charge will be made for return cheques.

5.14. If the Purchaser fails to make any payment when it becomes due and payable, the amount shall be a debt immediately payable by the Purchaser. In respect of such debts, the Supplier reserves the right:

- a) to withhold all retrospective discounts and rebates otherwise due;
- b) to defer or cancel future or in progress orders and collections arranged with any Haulier;
- c) to charge the Interest Rates in accordance with Condition 6; and
- d) to charge all expenses, including third party collection and legal fees, which the Supplier may incur in recovering the outstanding sums.

5.15. The Purchaser shall make all payments due without any deduction by way of set off, withholding, counter claim, discount, awaiting stock uplifting/credits due, abatement or otherwise.

5.16. The Supplier may set off any sums due from the Purchaser for products supplied against any sums which the Supplier may otherwise owe to the Purchaser.

5.17. The prices for the Products shown in the price list are updated at the time of printing, please request the latest order form to ensure the Purchaser are in receipt of current pricing. The Purchase Price for the Products excludes amounts in respect of value added tax ("VAT"), which the Purchaser shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice and the price for the Products.

5.18. Whilst the Supplier shall endeavour to provide the Products at the Purchase

Price, prices are subject to change and those are ruling at the time of the invoice. The Supplier may, increase the Purchase Price of the Products to reflect any increase in the cost of the Products that is due to any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); any request by the Purchaser to change the date for collection by the Haulier, quantities or types of Products ordered; or any delay caused by any instructions of the Purchaser or the Haulier, or failure of the Purchaser to give the Supplier adequate or accurate information or instructions with respect of the Products or arrangement for collection with the Haulier.

6. Interest

6.9. If the Purchaser fails to make any payment due to the Supplier under the Contract, by the date at which any such amount becomes due, the Purchaser shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after any judgment is given.

6.10. Interest under this Condition shall accrue each day at the following Interest Rates at each of the deadlines as follows, and calculated as a percentage above the NatWest base rate from time to time prevailing:

6.10.1. 3% per annum where the overdue sum has been overdue for more than 7 days;

6.10.2. 5% per annum where the overdue sum has been overdue for more than 14 days;

6.10.3. 7% per annum where the overdue sum has been overdue for 21 days;

6.10.4. 8% per annum where the overdue sum has been overdue for 28 days

6.11. For the avoidance of doubt, each Interest Rate at Condition 6.2 shall be calculated from the day which the sum becomes due until the date such sums are paid, so that the full Interest Rate is payable on any amounts owing. Where the Purchaser pays an outstanding sum after a deadline specified at Conditions 4.2.1 – 4.2.4, the higher Interest Rate for the next deadline shall be applied to the outstanding sum and the lower Interest Rates shall be disregarded.

7. Retention of Title

7.9. The legal and beneficial title in any Products shall not pass to the Purchaser until the Supplier has received payment in full in cleared funds of the Purchase Price for those Products including all other sums due from the Purchaser to the Supplier on any other account or invoice which is due but unpaid.

8. Warranties and Exclusions

8.9. The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery ("Warranty Period"), the Products shall:

8.9.1. conform in all material respects with their description and their;

8.9.2. be free from material defects in design, material and workmanship; and

For the purposes of this Condition 8.1, a "material defect" shall be a defect in the Products which has a significant detrimental implications on the functioning of the Goods, to the extent that the Products are unsafe, or the Products are unusable for their primary purpose or at all.

8.10. Nothing in Condition 8.1 shall effect the Purchaser's ability to rely on the manufacturer's warranty which may be supplied with the Products, but notwithstanding, the Purchaser shall be bound by the provisions of this Condition 5 in relation to any claim made under a the manufacturer's warranty.

8.11. Subject to Condition 8.4, the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full, provided that:

8.11.1. the Purchaser gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in Condition 8.1;

8.11.2. the Supplier is given a reasonable opportunity of examining such Products; and

8.11.3. the Purchaser (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Purchaser's cost.

8.12. The Supplier shall not be liable for the Products' failure to comply with the warranty in Condition 4.1 if:

8.12.1. the Purchaser makes any further use of such Products after giving a notice in accordance with Condition 8.2;

8.12.2. the defect arises because the Purchaser failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;

8.12.3. the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Purchaser;

8.12.4. the Purchaser alters or repairs such Products without the written consent of the Supplier;

8.12.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

8.12.6. the Products differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

8.13. Except as provided in this Condition 8, the Supplier shall have no liability to the Purchaser in respect of the Products failure to comply with the warranty set out in Condition 8.1.

8.14. The Purchaser's attention is drawn again specifically to those matters contained at Condition 8 of these Conditions.

9. Liability

9.9. The Purchaser's attention is in particular, drawn to the provisions of this Condition 9.

9.10. The restrictions on liability in this Condition 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.11. Neither party may benefit from the limitations and exclusions set out in this Condition in respect of any liability arising from its deliberate default.

Nothing in the Contract limits any liability which cannot legally be limited.

9.12. The Supplier's total liability to the Purchaser shall not exceed the total charges due to the Supplier under the Contract.

9.13. In Condition 9.5 "total charges". The total charges shall mean all sums paid by the Purchaser and all sums payable under the Contract (but not any other contract) in respect of Products actually supplied by the Supplier, whether or not invoiced to the Purchaser.

9.14. This Condition 9.6 sets out specific heads of excluded loss and exceptions from them:

9.14.1. Subject to Condition 9.4, the types of loss listed in Condition 9.7(b) are wholly excluded by the parties.

9.14.2. The following types of loss are wholly excluded:

9.14.2.1. loss of profits;

9.14.2.2. loss of sales or business;

9.14.2.3. loss of agreements or contracts;

9.14.2.4. loss of anticipated savings;

9.14.2.5. loss of use or corruption of software, data or information;

9.14.2.6. loss of or damage to goodwill; and

9.14.2.7. indirect or consequential loss.

9.15. The Supplier has given commitments as to compliance of the Products with relevant specifications in Condition 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.16. This Condition 9 shall survive termination of the Contract

10. Force Majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from a Force Majeure Event.. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 8 weeks, the party not affected may terminate this agreement by giving 7 days' written notice to the affected party.

11. Termination

11.9. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Purchaser if:

a) the Purchaser commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;

b) the Purchaser 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

c) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

d) the Purchaser's financial position deteriorates to such an extent that in the Supplier's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.10. Without limiting its other rights or remedies, the Supplier may suspend provision of the Products under the Contract or any other contract between the Purchaser and the Supplier if the Purchaser becomes subject to any of the events listed in Conditions 11.1 a-d above, or the Supplier reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.

11.11. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Purchaser, if the Purchaser fails to pay any amount due under the Contract on demand. On termination of the Contract for any reason the Purchaser shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Purchaser immediately on receipt.

12. Notices

12.9. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- a) delivered by hand or by 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 fax to its main fax number or sent by email to the address specified in the order form (or specified elsewhere).

12.10. Any notice or communication shall be deemed to have been received:

- a) if delivered by hand, at the time the notice is left at the proper address; and
- b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day (Monday – Friday excluding Bank Holidays) after posting or at the time recorded by the delivery service; and
- c) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Condition 12.2, business hours means 9.00am to 5.00pm on the Business Days.
- d) This Condition 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.

13. Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15. Third Party Rights

15.9. Unless it expressly states otherwise, 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.

15.10. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16. 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 Condition 14 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

17. Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

18. Law

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 law of England and Wales.

19. Jurisdiction

Each contract shall be governed by English Law and any disputes in relation thereto shall be subject to the exclusive jurisdiction of the courts of England and Wales.