

## **Lacto Foods A/S ("the Buyer")**

### **Terms and Conditions of Purchase**

#### **1. Definitions**

1.1 In relation to the terms and conditions set out below ("these Conditions") the following words shall have the following meanings:

- Buyer:** Lacto Foods A/S a company incorporated in Denmark whose principal place of business is at Åbogade 15; 8200 Århus N; Denmark.
- Contract:** Any contractual arrangement relating to the supply of Goods to the Buyer by a Supplier including an arrangement pursuant to which Call Off Orders may be placed by the Buyer from time to time depending upon its requirements and which incorporates the Buyer's purchase order, Specification and these Conditions;
- Call Off Order:** An order for a specific number of Goods at a specific time, for delivery to a nominated warehouse as placed by the Buyer from time to time with a Supplier pursuant to a Contract;
- Order:** An order placed with a Supplier by the Buyer for the supply of a specific number of Goods other than a Call Off Order;
- Quality Control Procedures:** The Buyer's quality control procedures, details of which shall be advised to the Supplier from time to time;
- Quotation:** Any quotation from a Supplier to the Buyer in accordance with which the Supplier offers to supply Goods to the Buyer;
- Specifications:** All specifications and descriptions of any Goods supplied or to be supplied by the Buyer (whether contained in a Contract or an Order or otherwise) specified by the Buyer and agreed between the Buyer and the Supplier from time to time;
- Supplier:** the person firm company or other entity with whom the Buyer enters into a Contract or negotiates a contract whether or not concluded;

#### **2. Basis of Contract**

- 2.1 These Conditions shall be deemed to be incorporated in every contract between the Buyer and the Supplier (as varied in accordance with a Specification or the Buyer's purchase order) for Goods unless otherwise agreed by the Parties. These Conditions shall prevail over, supersede and exclude all terms and conditions implied by trade custom, practice or dealing and all inconsistent terms or conditions contained in or referred to in the Supplier's Quotation, acceptance of an Order or correspondence or elsewhere. No addition to or variation of or exclusion of these Conditions or any of them shall be binding upon the Buyer, unless confirmed expressly and specifically by the Buyer, in writing.
- 2.2 The Supplier agrees to comply with all requirements of the Buyer in respect of delivery, warehousing, invoicing, quality control, return of returnable packaging or delivery materials, bar coding and other such requirements (including any amendments thereto) as are notified in writing to the Supplier from time to time and these requirements will form part of each Contract.
- 2.3 All the terms of a Contract are contained in or referred to in the Buyer's purchase order, the Specification and these Conditions. Every Quotation to supply Goods and every acceptance of an Order or Call-Off Order for Goods by the Supplier constitutes unconditional acceptance of these Conditions.

#### **3. Alteration of Specifications**

- 3.1 No alteration to any Specification shall be of any effect unless made by the Buyer in writing.

The Buyer reserves the right to make alterations from time to time to any Specifications upon giving reasonable notice to the Supplier and the price for the Goods which are

supplied to any new Specification shall be increased or decreased by such amount as shall be reasonable to reflect such alteration.

#### **4. Quality Control**

- 4.1 All relevant Quality Control Procedures issued by the Buyer shall form part of these Conditions. If either the initial Quality Control Procedures are not completed to the Buyer's satisfaction, or at any time thereafter ongoing Quality Control Procedures are not complied with to the Buyer's satisfaction then the Buyer may terminate the whole or any unfulfilled part of any applicable Contract at any time without further liability to the Supplier other than to pay for any Goods which the Buyer has received and which it does not reject pursuant to any provision of these Conditions.
- 4.2 The Supplier shall arrange for representatives of the Buyer to be given access at all reasonable times to the Supplier's premises and any premises where Goods, or any materials from which Goods are manufactured, are manufactured, processed, packaged, stored or collated for the purposes of inspecting and examining materials used in, and the process of manufacture, processing, packaging, storage and collation or, inspect and examine any Goods being supplied or to be supplied to the Buyer. Any such inspection or examination shall not absolve the Supplier from responsibility or liability under these Conditions nor imply acceptance of the Goods by the Buyer.

The cost of any testing or product evaluations of any Goods deemed by the Buyer to be necessary shall be borne by the Supplier.

#### **5. Warranties and Indemnity**

- 5.1 The Supplier warrants to the Buyer that all Goods supplied by the Supplier to the Buyer will:
- 5.1.1 be of the nature, quantity, substance and quality described in, and will comply in every respect with the provisions of, the Contract pursuant to which they are supplied;
  - 5.1.2 comply in every respect with the provisions of existing legislation and statutes of either Danish or EC origin and all Regulations, Statutory Instruments, Directives, orders, Decisions or any other requirements made there under including those which relate to or control the nature, substance, quantity, quality, fitness for purpose, packaging, packing, labeling, sale, offering for sale, use, marking, constitution, importation, exportation, transportation, possession, dealing, make-up or trade description of such Goods ("Relevant Legislation");
  - 5.1.3 be free from defects in design, materials and workmanship, free from any adulteration and will not contain any foreign matter;
  - 5.1.4 not be the subject of any charge or adverse title;
  - 5.1.5 not infringe the intellectual property rights of any third party established under trade marks, trade names, copyrights, patents or any other protection whatsoever;
  - 5.1.4 be:
    - 5.1.4.1 correctly marked (whether on the Goods themselves, or their labelling or packaging) as to the country of manufacture;
    - 5.1.4.2 correctly declared as to their origin on importation in to the EEA;
    - 5.1.4.3 not imported in excess of any quota or other prohibition or restriction;and
  - 5.1.4.4 either: (i) not subject to any chargeable excise duty; or (ii) provided with appropriate documentation where excise duties are chargeable.

- 5.1.5 have not been repackaged, rebranded, defaced or otherwise tampered with since being first placed on the market in any way.
- 5.2 The Supplier warrants to the Buyer only in respect of all Orders and Contracts under which Goods are supplied for delivery in the EU from a territory outside the EU that it shall obtain any necessary licences for the exportation, transportation and importation into the EU of the Goods, shall satisfy itself that such licences have been properly obtained and comply with the existing legislation and shall ensure that these licences are delivered to the Buyer where required by the Buyer to enable import clearance without demurrage.

## **6. Delivery Date**

- 6.1 Where a date for delivery of Goods is specified in a Contract and/or where the Buyer is entitled to, and does, notify the Supplier from time to time of a delivery date, such date must be adhered to strictly by the Supplier and time shall be of the essence. Failure to deliver Goods on the date so specified or notified shall, without prejudice to any other rights or remedies of the Buyer, entitle the Buyer to reject those Goods and/or terminate the whole of any unfulfilled part of the Contract pursuant to which they were to be delivered without further liability of the Buyer to the Supplier.
- 6.2 Unless stated to the contrary in a Contract the Buyer shall not be obliged to accept delivery by instalments. If, however, in its discretion the Buyer does specify or agree to accept delivery by instalments, delivery of any one instalment later than the date so specified or agreed shall, without prejudice to any other rights or remedies of the Buyer, entitle the Buyer to terminate the whole or any unfulfilled part of the Contract without further liability of the Buyer to the Supplier.
- 6.3 In relation to all Contracts under which Goods are supplied for delivery in the EU and unless agreed in writing by the Buyer to the contrary:
- 6.3.1 the Goods shall be delivered, carriage and duty paid to the address for delivery;
- 6.3.2 the Supplier shall insure the Goods for an amount as specified by the Buyer or, in the absence of such specification, an amount equal to 125% of the Contract price for the Goods plus any duty payable thereon with a reputable EU insurance company against all risks including but not limited to theft, pilferage and non delivery for any reason from the point of production to final destination in the EU via sea, air, road, rail or any other method of transport;
- 6.3.3 payment shall be in Euro, in exchange for proper documents;
- 6.3.4 all Goods shall be accompanied by a delivery note in such form and containing such details as the Buyer shall notify to the Supplier from time to time;
- 6.4 A receipt note in the form notified by the Buyer to the Supplier from time to time (including any amended form) which is issued by the Buyer's branch or warehouse is the only proof of delivery of any Goods that will be accepted by the Buyer and the Buyer shall not be liable to pay for Goods unless and until the prescribed receipt note for them is produced to it.

## **7. Title and Risk**

- 7.1 Title to and risk in any Goods delivered to the Buyer pursuant to a Contract shall pass to the Buyer upon delivery to the Buyer notwithstanding any purported retention of title by the Supplier until some later date or attempt by the Supplier to transfer risk at an earlier date.
- 7.2 The Buyer shall take title but shall not accept risk in any Goods delivered in excess of the quantity ordered save that in respect of any such over-delivered Goods the Buyer shall be entitled to display them for sale and to sell them without first giving notice to the Supplier.
- 7.3 If the Buyer sells any Goods pursuant to 7.2, the Buyer shall pay the Supplier for them as if they had been delivered pursuant to the Contract to which they were surplus provided always that the Buyer shall be entitled to retain from that payment the cost of the sale, storage and other charges and any other monies due from the Supplier.

- 7.4 If the Buyer fails or elects not to sell any such over-delivered Goods it shall be entitled to give notice in writing to the Supplier to remove them or any of them within seven days of receipt by the Supplier of such written notice and to refund to the Buyer any and all reasonable expenses directly or indirectly incurred by the Buyer as a result of their delivery including but not limited to the cost of moving and storing them failing which the Buyer shall be entitled to dispose of such Goods whether in accordance with 7.2 or 7.3 or otherwise and the Buyer shall be entitled to deduct from any future payments due from the Buyer to the Supplier the amount of any reasonable expenses referred to above together with the amount of any reasonable expenses incurred in connection with the disposal of those Goods.

## **8. Price and Payment**

8.1 The price of the Goods shall be as stated in the Buyer's purchase order or if no such price is stated in the Buyer's purchase order then the price of the Goods shall be the lowest price currently quoted or charged at the date of the Buyer's purchase order by the Supplier for those Goods but in no event higher than the price most recently charged to the Buyer by the Supplier for those Goods.

8.2 No variation in the price nor extra charges shall be accepted by the Buyer.

8.3 Unless otherwise stated in the Buyer's purchase order, the Buyer shall pay the price of the goods within 28 days of delivery of the Goods to the Buyer but time shall not be of the essence in the performance by the Buyer of its payment obligation.

## **9. Acceptance of Goods**

9.1 The issue by the Buyer of a receipt note for any Goods shall not constitute any acknowledgement of the condition or nature of those Goods nor the compliance by the Supplier with any of these conditions.

9.2 The Supplier acknowledges that the Goods supplied by it are purchased by the Buyer for further sale and that the Buyer's procedures prevent examination of all Goods until after they are sold and that some defects may not be discovered by the Buyer until a customer draws them to its attention.

9.3 If it is found within a reasonable time (bearing in mind the facts recited in clause 9.2) after delivery of any Goods to the address for delivery that they or part of them are not in accordance with the applicable Contract or do not comply with any Specification or sample or are not of merchantable quality or are not suitable for the purpose for which they are intended or are in breach of any of the warranties given by the Supplier in clause 5, then notwithstanding the provision of clause 11.2 below, the Buyer shall have the right to:

9.3.1 reject those Goods or any of them and to require the Supplier to remove them or any of them and to refund to the Buyer the price paid by the Buyer together with all expenses directly or indirectly incurred by the Buyer in consequence of such rejection or removal; and

9.3.2 to treat the Contract and/or any unfulfilled part of it as wholly repudiated by the Supplier.

## **10. Contamination**

10.1 In the event that any Goods supplied by the Supplier (whether or not such Goods have been supplied to the Buyer) are discovered to have been contaminated whether deliberately or accidentally prior to delivery by the Supplier, the Buyer shall be entitled, without further liability to the Supplier:

10.1.1 to suspend delivery of; and/or

10.1.2 to terminate any Contract for; and/or

10.1.3 to require the Supplier to collect at its own risk and expense any stocks already held by the Buyer of any Goods so contaminated and/or any Goods of the

same description as those so contaminated and/or any other Goods supplied by the Supplier the re-sale of which the Buyer, in its absolute discretion, considers is or will be commercially inadvisable as a result of the contamination and the Buyer shall be released from any obligation which has already arisen to pay for, and shall be entitled to a full refund of any sums already remitted in payment for, any such Goods.

10.2 For the purpose of 10.1, Goods will be deemed to be contaminated where they contain any substance or possess any quality or attribute which, in the Buyer's opinion, is actually or potentially harmful to consumers or renders re-sale of the Goods commercially inadvisable or where a claim by any person that the Goods have been interfered with becomes public knowledge.

## **11. Returned Goods**

11.1 Whenever and for whatever reason Goods are returned by the Buyer to the Supplier or are collected by the Supplier on the instructions of the Buyer, the Buyer will issue an official return to supplier note in the form (including any amended form) notified to the Supplier from time to time. The Supplier's or carrier's signature or that of its agent or employee or sub-contractor on such documents or on the Supplier's uplift note shall constitute acceptance of the details set out within the document unless a counter notice rejecting those details is served on the Buyer within three working days of the date of the document.

11.2 Except where otherwise agreed in writing, where any Goods in which the Buyer has already taken title are returned by the Buyer to the Supplier in accordance with these conditions, title in those Goods shall not pass to the Supplier and shall remain in the Buyer until the Supplier has paid to the Buyer all sums due under the Contract pursuant to which they were supplied. Until such time as title shall pass to the Supplier, the Supplier shall at its expense keep the Goods separate and apart from other Goods, properly stored, protected and insured and in such a way as to identify them clearly as belonging to the Buyer and shall take all steps necessary to ensure that it neither becomes nor is deemed to be the reputed owner of the Goods and the Supplier shall not sell or dispose of the Goods to any third party without prior agreement in writing by the Buyer. If the Supplier sells the Goods or if the Goods are destroyed, damaged or lost it shall hold the proceeds (whether tangible or intangible) of any such sale or disposal and any insurance proceeds in respect of such destruction, damage or loss as a fiduciary agent and bailee for and to the account of the Buyer and to transfer to the Buyer any such rights or claims against third parties to the extent necessary to discharge in full the Supplier's indebtedness to the Buyer. The Supplier shall keep all tangible proceeds properly stored, protected and insured. If at any time payment of sums due to the Buyer in respect of the Goods is overdue, the Buyer may by its servants or agents enter upon the Supplier's premises and recover and dispose of the Goods and the Supplier shall make no claim against the Buyer in respect of such entry or disposal save to recover any balance due to the Supplier.

## **12. Indemnity**

- 12.1 The Supplier accepts full responsibility for, and shall indemnify and keep indemnified the Buyer from and against any and all direct, indirect, special and consequential liabilities, actions, claims, costs, costs of product recall, expenses, fines, losses, liabilities, penalties and proceedings including, without limitation, loss of profit, loss of business, loss of revenue, depletion of goodwill, loss of anticipated savings, loss of management time and legal and other professional costs awarded against or incurred or paid by the Buyer as a result of, or in connection with:
- 12.1.1 the Goods being of defective workmanship, quality and/or materials;
  - 12.1.2 any alleged or actual infringement of any patent, registered design, design right, copyright, registered or unregistered trade mark or other rights of property vested in any other person resulting from the purchase, use or resale by the Buyer or its customers of the Goods or any part thereof; and/or
  - 12.1.3 any act or omission in the performance of or in connection with any or all of the obligations undertaken by the Supplier pursuant to a Contract, whether by reason of the negligence of the Supplier, its agents or sub-contractors or otherwise.
- 12.2 The Supplier shall not be liable to indemnify the Buyer in accordance with 12.1 above if and to the extent that the loss suffered or incurred by the Buyer results from the contravention by the Buyer of Relevant Legislation by reason of the Buyer's own wilful or negligent act or omission or results only because the Supplier delivered the Goods strictly in accordance with the Specification supplied by the Buyer.
- 11.3 Any descriptions given by the Supplier in relation to any Goods supplied shall be deemed to be representations made by the Supplier and, where any such description is found to be materially wrong, the Buyer shall be entitled to the remedies described in clause 9.3.1 and 9.3.2

## **13. Insurance**

- 13.1 The Supplier shall for so long as it is party to a Contract with the Buyer hold and maintain in force at all times and for a period of ten years thereafter a product liability insurance policy, with an indemnity limit of dkk 10,000,000 or such sum as the Buyer may from time to time reasonably require in respect of injury or damage to persons or property arising out of the manufacture or sale of Goods supplied by the Supplier to the Buyer and the Buyer shall be entitled to inspect such policy at any time on reasonable notice and shall be supplied with the current premium receipt from time to time if requested.
- 13.2 If at any time the Supplier fails to pay any premium which it is obliged to pay pursuant to clause 13.1, the Buyer shall be entitled to pay any such premium itself on the Supplier's behalf and to deduct an amount equal to any sum so paid by way of set off against any sums owed by the Buyer to the Supplier or, if none, to recover such amount as a debt from the Supplier.

## **14. Buyer's Property**

- 14.1 The Supplier shall be responsible for any property of the Buyer which may be issued to the Supplier in connection with any Contract and, in the event of any loss of, or damage to, it whilst in the Supplier's possession, whether or not caused by the negligence or fault of the Supplier, its servants or agents, the Supplier will be liable to the Buyer for the full new replacement value of the property or the value of the items in question, whichever is the higher, unless the damage is reasonably repairable in which case it shall be liable for costs of, and ancillary to, the repair. Prior to invoking this clause against the Supplier the Buyer shall perform all reasonable endeavours to obtain full compensation from its insurers under the terms of its insurance cover from time to time in place.
- 14.2 The Supplier hereby assigns to the Buyer all the intellectual property rights and all other rights of a like nature conferred under the laws of all other countries of the world in any artwork which has been created (and by way of present assignment of future intellectual property rights in any artwork which will be created) for use on or in relation to any "own-label" Goods to be supplied to the Buyer.

- 14.3 All working drawings, labels, specifications, manufacturing data, plans, designs, patterns, descriptions, information and components supplied by the Buyer in connection with any Contract or Order together with any copies made by or for the Supplier and any copyright, design right or other proprietary right in any or all of them:
- 14.3.1 shall remain the Buyer's property;
  - 14.3.2 shall not be disclosed to any third party without the Buyer's written consent;
  - 14.3.3 shall be used only for the purpose of fulfilling a Contract;
  - 14.3.4 shall be returned to the Buyer forthwith upon demand.

## **15. Force Majeure**

Notwithstanding any other provision of these conditions the Buyer shall be entitled to suspend delivery of any Goods and/or cancel any Call Off Order and/or terminate any Contract for Goods if, due to any cause beyond its control (including but not limited to fire, explosion, flood, war, riot, weather, industrial action, strike, lock out, stoppages of work, governmental intervention, epidemic, health warning or advice from a statutory, regulatory or government department, breakdown of plant or machinery) it is hindered or prevented from taking delivery of or using or re-selling such Goods and it shall have no liability to the Supplier for any loss suffered or incurred as a result of such suspension, cancellation or termination and shall not affect the rights and liabilities of the parties already accrued at that time.

## **16. Confidentiality**

- 16.1 The Supplier shall not announce or disclose the existence of any contractual arrangement between the Supplier and the Buyer or its terms unless specifically agreed by the Buyer or as required by law or the requirements of an International Stock Exchange. Any such announcement or disclosure by the Supplier shall in any event be made only after prior consultation with the Buyer.

## **17. Termination of Contracts**

- 17.1 The Buyer shall be entitled forthwith to terminate any Contract by written notice to the Supplier if:
- 17.1.1 the Supplier commits any material breach of any of these Conditions or of any other provisions of any Contract; or
  - 17.1.2 the Supplier becomes bankrupt, if a supervisor, receiver, administrative receiver or administrator is appointed over the whole or any part of its assets or if an administrator is appointed out of court or if an order is made or resolution passed for its winding up or its business or the relevant party is the subject of any equivalent event or proceeding under the laws of any jurisdiction; or
  - 17.1.3 the Buyer reasonably apprehends that any of the events mentioned in 17.1.2 is about to occur and notifies the Supplier accordingly.

## **18. Disposal of Own-Label Goods**

In the event of the non-delivery to the Buyer, or the return to the Supplier for whatever reason, of any Goods which are manufactured, packaged or labelled in such a manner as to identify them in any way with the Buyer, the Supplier shall not under any circumstances dispose of those Goods to a third party without the prior written consent of the Buyer. Any specific instructions given by the Buyer in respect of such instructions shall be strictly adhered to by the Supplier and, in any event, all references to the Buyer's name, address, trade marks, and any other indications of the Buyer's identity shall be totally removed by the Supplier prior to disposal so that no such reference remains which might lead any third party to associate the Goods with the Buyer.

## **19. General**

- 19.1 The execution of a Contract shall not be sub-contracted nor assigned by the Supplier either wholly or in part and neither shall the Supplier assign in whole or in part the benefit of or

under a Contract without the prior written consent of a director of the Buyer. Where the Buyer consents to the assignment by the Supplier of the whole or part of the benefit of or under a Contract the Buyer, once it has received written notice of that assignment, will render performance of its relevant obligations under that contract to the named assignee until it receives written instructions to the contrary from both the Supplier and the named assignee save that in the event of a dispute between the Supplier and the named assignee the Buyer shall be entitled, at its sole discretion, to pay any sums due from the Buyer into court, or into a designated account pending the resolution of that dispute. The Buyer may assign its rights and/or obligations under a Contract without the Supplier's consent.

- 19.2 No waiver by the Buyer or the Supplier of any breach of any provision of these Conditions or any other provision of any applicable Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 19.3 If any provision of these Conditions is held by any court of competent jurisdiction to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 19.4 Any notice or other information required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and may be given by pre-paid registered post, special delivery or express delivery service or by telex, or by facsimile transmission or by transmission via a reputable private courier company and any notice or information so sent shall be deemed to have been properly and effectively given, if sent by registered post, special delivery, express delivery service or by courier the day delivery is signed for on behalf of the addressee or, if sent by telex, or by facsimile transmission or comparable means of communication, 24 hours after it has been transmitted. Any notice or information sent to the Buyer shall be sent to the address shown on this agreement marked "**for the immediate attention of the Company Secretary**".
- 19.5. Nothing in a Contract is intended to confer on any person any right to enforce any term or condition of a Contract which that person would have had but for the contracts.
- 19.6 All Contracts and these Conditions will be construed in accordance with the laws of Denmark and the Supplier hereby agrees that the Danish courts shall have exclusive jurisdiction in relation to any claim brought by the Supplier against the Buyer but that the Buyer shall be entitled to bring a claim against the Supplier in any court of competent jurisdiction.