

## Barilla Limited

### TERMS AND CONDITIONS OF SALE

#### 1. Definitions

In these conditions, the following expressions shall have the following meanings:

1. The Company means Barilla Limited.
2. Goods means the articles or things or any of them described in the Contract.
3. The Buyer means the person, firm or company with whom the Contract is made by the Company whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such person, firm or company.
4. The Contract means the Company's quotation for the sale or supply of the Goods and any document referred therein, these conditions of sale, the Company's acknowledgement of the Buyer's order for the Goods and the Buyer's order for the Goods, and if there shall be any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed.

#### 2. General

These conditions shall be deemed to be incorporated in all contracts of the Company to sell Goods and in the case of any inconsistency with any order, letter or form of contract sent by the Buyer to the Company or any other communication between the Buyer and the Company whatever may be their respective dates, the provisions of these conditions shall prevail unless expressly varied in writing and signed by a director on behalf of the Company. Any concession made or latitude allowed by the Company to the Buyer shall not affect the strict rights of the Company under the Contract. If in any particular case any of these conditions shall be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

#### 3. Orders

1. Unless verbal orders and any variations to orders are confirmed in writing by the Buyer, the Company shall not be responsible for errors or subsequent misunderstandings.
2. Notwithstanding that the Company may have given a detailed quotation, no order shall be binding on the Company unless and until it has been accepted in writing by the Company.

#### 4. Prices

1. The price payable for Goods shall, unless otherwise stated by the Company in writing and agreed on its behalf, be the list price of the Company current at the date of despatch.
2. All prices are exclusive of Value Added Tax. This will be charged at the appropriate rate.
3. The Company's prices are subject to adjustment to take account of any variation in the Company's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alterations of duties and other costs since the date of the Company's quotation or (if no quotation is issued), the Buyer's order. The Company accordingly reserves the right to adjust the invoice price by the amount of any increases or decreases in such costs after the price is quoted. The invoice so adjusted shall be payable as if the price set out therein were the original contract price.

#### 5. Terms of Payment

1. Unless otherwise stated by the Company in writing, payment shall be due in cleared funds prior to the shipment by the Company of the Goods.
2. Without prejudice to any other rights it may have, the Company is entitled to charge interest at 2% above the then current base rate of Lloyds Bank Plc on overdue payments of the price of the Goods.

#### 6. Delivery

1. All times or dates given for delivery of the goods are given in good faith but without any responsibility on the part of the Company. Time of delivery should not be of the essence of any contract nor shall the Company be under any liability for any delay beyond the Company's control.
2. Where the Goods are handed to a carrier for carriage to the Buyer or the United Kingdom port for export, any such carrier shall be deemed to be an agent of the Company and not of the Buyer for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.
3. The Buyer agrees that Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Company.
4. No liability for non-delivery, loss of or damage of the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery, loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods): (a) within seven days of delivery for loss, damage or non-compliance with the Contract, or (b) within ten days of the date of the invoice for non-delivery.
5. In the event of a valid claim for non-delivery, loss, damage or non-compliance with the Contract, the Company undertakes at its option either to repair or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, loss, damage or non-compliance.
6. If the Buyer shall fail to give notice in accordance with condition 6(4) above, the Goods shall be deemed to be in all respects in accordance with the Contract. Without prejudice to earlier acceptance by the Buyer, it shall be bound to accept and pay for the same accordingly.

#### 7. Returns

Goods supplied in accordance with the contract cannot be returned without the Company's prior written authorisation. Duly authorised returns shall be sent to the Company's Premises at the Buyer's expense.

#### 8. Packing and Carriage

Unless otherwise agreed by the Company in writing, the prices of the Goods are inclusive of packing and exclusive of carriage.

#### 9. Passing of Title and Risk

1. From the time of delivery, the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the property of the Company until all payments under the Contract have been made in full and unconditionally. Whilst the ownership of the Company continues the Buyer shall keep the Goods separate and identifiable from all other goods in its possession as bailee for the Company.
2. In the event of any resale by the Buyer of the Goods, the beneficial entitlement of the Company shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim thereof shall be assigned to the Company and until and subject to such assignment shall be held on trust in a separate identified account for the Company by the Buyer who shall stand in a strictly fiduciary capacity in respect thereof.

3. In event of failure to pay the price in accordance with the Contract, the Company shall have power to resell the Goods. Such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purposes the Company and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.

**10. Conditions and Warranties**

1. The Contract shall not constitute a sale by description or sample.

2. Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade, custom or usage) as to the quality of the Goods or their fitness for any particular purposes (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.

3. Save that for the avoidance of doubt, the provisions at clause 10.2 above shall not affect such right as the Buyer shall have to rely upon any form of warranty provided by the manufacturer of the Goods (where the Goods are not manufactured by the Company).

**11. Defective Goods**

1. In substitution for all rights which the Buyer would or might have but for these conditions, the Company undertakes that if within twelve months of delivery of the Goods a defect under proper use appears therein (fair wear and tear excepted) and arising solely from faulty design, materials or workmanship (excluding any electrical component) it will at its own discretion, provided the Goods have been accepted and paid for by the Buyer, repair or replace them or supply new parts therefor and shall return them free of charge in order to exercise its rights under this condition. The Buyer shall inform the Company as soon as practicable after the date which such defect appeared. Provided always that this condition 11.1 shall not apply to goods which were not manufactured by the Company.

2. In the case of Goods not manufactured by the Company, the Company will pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.

3. Nothing herein shall impose any liability on the Company in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendations of the Company as to storage and use of the Goods (including without limitation any instructions provided by the Company as to the use or installation of the Goods).

4. Nothing herein shall have the effect of excluding or restricting the liability of the Company for death or personal injury arising from its negligence in so far as the same is prohibited by United Kingdom statute.

**12. Consequential Loss**

The Company shall not be liable for any costs, claims or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, production or accruals by reference to accrual of such costs, claims, damages or expenses on a time basis.

**13. Default on Insolvency of the Buyer**

If the buyer shall be in breach of any of its obligations under the Contract or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy or if any bankruptcy petition be presented against him or (if the Buyer is a company) if any resolution or petition to wind up such company shall be passed or presented or a Receiver of the whole or any part of such company's undertaking property or assets shall be appointed, the Company in its discretion and without prejudice to any other right or claim made by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of the Goods until any defaults of the Buyer be remedied.

**14. Limitation of Liability**

The liability of the Company to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the price of the Goods.

**15. Representations**

No statement, description, information, warranty, condition or recommendation contained in any catalogue price list, advertisement or communication in writing or made verbally by any of the agents or employees of the Company shall be construed to enlarge, vary or override in any way any of these conditions.

**16. Force Majeure**

The Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing, obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including but not limited to strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at its premises, breakdown of plant or machinery or shortage or unavailability of raw materials from normal source of supply.

**17. Headings**

The headings in these conditions are intended for reference only and shall not affect their construction.

**18. Proper Law**

The Contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Buyer and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.