

## MATHERS DAIRY UTENSILS COMPANY LIMITED

### STANDARD TERMS AND CONDITIONS - CONSUMER

#### 1 Definitions

1.1 In these terms and conditions, unless otherwise stated, the following terms shall have the following meanings:

“Seller” means Mathers Dairy Utensils Company Limited;

“You” means the person seeking to purchase any Goods and/or Services from the Seller;

“the Goods” means any products, articles, services or any physical items or objects offered for sale by the Seller and purchased or to be purchased by you as specified in the Contract;

“Order Acknowledgment” means the Seller’s written acceptance/acknowledgment of your order for any Goods;

“the Services” means the services including but not limited to design and installation work (including any Goods supplied by the Company as part of the Services) supplied by the Seller to you as set out in the Contract; and

“the Contract” means the contract for sale and purchase of Goods made between the Seller and you in all cases on these Terms and Conditions and the Seller’s Order Acknowledgment but which may be otherwise made in any form.

1.2 Every order issued by you (in whatever form) and accepted in writing by the Seller shall be treated as a separate Contract. No Contract shall exist unless and until the Seller has issued an Order Acknowledgement.

#### 2 The Seller's Terms and Conditions to Apply

2.1 These Terms and Conditions shall apply to and rule any Contract or transaction between the Seller and you and shall supersede and take priority over any other terms and conditions, whether written or oral (including regardless of what has been stated before, any contained in any order form used by you), and in spite of anything to the contrary in such other terms and conditions.

2.2 No amendment, variation of, or addition to any part of these Terms and Conditions may be made except in writing signed by a duly authorised representative of the Seller and you.

#### 3 Sale and Purchase of the Goods

3.1 The Seller shall sell the Goods and provide Services to you and you shall purchase the Goods or receive the Services provided to them in accordance with these Terms and Conditions and the terms of the Contract.

- 3.2 Unless different credit terms have been agreed in writing, you shall pay 15% of the invoiced total at the point the Order Acknowledgment is issued and after that shall pay a further 75% of the invoiced total before the delivery of the Goods and/or Services. The balance of the invoice must be paid in full and in cleared funds within 7 days of the delivery of Goods and/or the supply of Services, whichever falls first. Services will be included in any invoice. If you fall behind with any payments to the Seller by a month or more then the Seller can sue you for the full amount of any invoices plus any reasonable costs and expenses incurred by the Seller.
- 3.3 The price for Goods and Services shall be that specified in the Order Acknowledgment.
- 3.4 Any price quoted by the Seller shall, unless otherwise indicated, include the costs of delivery within the Seller's normal delivery area. Goods agreed to be delivered outwith this area may be subject to such additional charge for delivery and carriage as the Seller deems appropriate in the circumstances.
- 3.5 All prices are inclusive of Value Added Tax at the rate applicable on the invoice date. The Seller has the right to increase or otherwise vary the rate of Value Added Tax that you pay for the Goods where, after an order has been placed by you but prior to delivery, new, additional, or increased taxes, levies, tariffs, or duties are levied in respect of the Goods by H M Government or any other taxing authority.
- 3.6 Unless otherwise agreed, the Seller shall be entitled to charge you for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, and any associated expenses, and for the cost of services provided by third parties and required by the Seller for the performance of the Services, and for the cost of any materials.
- 3.7 You will pay the Seller interest at the rate of 1 per cent per month compound interest on all outstanding sums from the due date until payment.

#### 4 Delivery

- 4.1 Unless otherwise agreed, the Seller shall deliver the Goods to such place or address as you may specify in its order within the Seller's normal published delivery area. The Seller shall provide manpower to promptly unload the Goods.
- 4.2 If you and the Seller agree, Goods may be collected by you from the Seller's premises without charge for delivery or carriage. You shall have sole responsibility for the loading of Goods and shall be responsible for any losses, expenses or other costs incurred by the Seller in this regard.
- 4.3 The Seller will make every effort to deliver any Goods and/or complete the work on time (or, if no date has been agreed, within a reasonable time from the date of your order) but the Seller cannot be held responsible for delays due to weather or other circumstances beyond their control. In this case the Seller will complete the work as

soon as reasonably possible. If delivery is made by instalments separate invoices for each instalment may be issued.

- 4.4 You must notify the Seller in writing within seven days of the date of delivery or collection of the Goods of any damage to or defects in all or any part of the Goods, or if the quantity delivered is not as stated in the Contract or as agreed between the Seller and you. The Seller shall try their best to ensure that Goods are suitably packaged prior to despatch but the Seller shall not be responsible for damage for any Goods in transit. The Seller shall have no liability whatsoever to you in respect of damage, defects or short delivery and you shall be deemed to have given up all its rights and remedies which it might otherwise have had in relation to such damage, defects or short delivery unless proper notification has been made in accordance with this clause 4.4 and clause 9.1 of these Terms and Conditions.

## 5 Title

- 5.1 Property and title to the Goods will not pass to you until such time as payment is made in full to the Seller of all sums and debts due in respect of the Goods supplied not only under the Contract but also under any other contract for the supply of goods and all other sums for the time being howsoever due or to become due by you to the Seller.
- 5.2 Until property in and title to the Goods passes to you, you shall keep the Goods in good repair and condition and store them separately from any other property in its possession so that the Goods are readily identifiable and separable from any other goods stored on your premises or otherwise in your possession.
- 5.3 Until such time as property and title to the Goods has passed to you, the Seller shall be entitled to enter your premises at any time (without giving prior notice) and repossess the Goods. Alternatively, the Seller may require you at any time forthwith and at your expense to deliver the Goods to the Seller.
- 5.4 If the Seller delivers the Goods to you prior to payment of the price for the Goods and/or if any other sum is due by you to the Seller and you sell the Goods to a third party, you shall make such sale only as trustee for the Seller and the proceeds of that sale shall be identified and kept separate from your general bank account as monies to be held upon trust and payable on demand to the Seller.

## 6 Supply of Services

- 6.1 The Seller shall provide the Services to you in accordance with the Contract in all material respects.
- 6.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not

materially affect the nature or quality of the Services, and the Seller shall notify you in any such event.

- 6.4 The Seller guarantees to you that the Services will be provided using reasonable skill and care.
- 6.5 You shall prepare your premises or the site where the Services will be performed for the supply of said Services where requested to do so by the the Seller in advance.
- 6.6 If the Seller's performance of any of its obligations in respect of the Services are prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation ("Purchaser Default"):
  - 6.6.1 the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until you remedy the Purchaser Default, and to rely on the Purchaser Default to relieve it from the performance of any of its obligations to the extent that the Purchaser Default prevents or delays the Seller's performance of any of its obligations;
  - 6.6.2 the Seller shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in the Contract or these Terms and Conditions; and
  - 6.6.3 you shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Purchaser Default.

## 7 Risk

The risk of loss or damage to the Goods shall pass from the Seller to you on delivery (or collection of the Goods by you) and that in spite of that property and title to the Goods has not passed to you.

## 8 Our rights to withhold or dispose of goods.

The Seller may keep hold of all or some of your Goods until you have paid all the charges you owe to the Seller, even if the unpaid charges do not relate to those particular Goods.

## 9 Warranties and Implied Terms

- 9.1 If any Goods delivered to you are not of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller by you before the contract concluded, or do not comply with all applicable statutory and regulatory requirements or are otherwise not in conformity with the terms of this agreement, then, without limiting any other right or remedy that you may have, you may within 7 days reject those Goods and:

- 9.1.1 require the Seller to repair or replace the rejected Goods at the Seller's risk and expense within 14 days of being requested to do so; or
  - 9.1.2 require the Seller to repay the price of the rejected Goods in full (whether or not you have previously required the Seller to repair or replace the rejected Goods); and
  - 9.1.3 claim damages for any other costs, expenses or losses resulting from the Seller's delivery of Goods or supply of Services that are not in conformity with the terms of this agreement..
- 9.2 Any of your rights and remedies under clause 9 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.
- 9.3 Except to the extent implied by law and which by law cannot hereby be excluded, the Seller shall not under any circumstances be liable to you for any indirect or consequential loss including regardless of what has been stated before, financial loss, loss of profits, production, anticipated savings or income. Where any person, firm or company by whom the Seller is or has been supplied validly excludes limits or restricts his or its liability to the Seller in respect of the Goods and/or supply of Services or any of them or any loss or damage arising in connection therewith, then the liability of the Seller shall be correspondingly excluded, limited or restricted.
- 9.4 You shall be entitled to the benefit of the manufacturer's warranty, if any, for the Goods purchased under the Contract if there are any defects in said Goods. This entitlement shall be given at the sole discretion of the Seller.
- 9.5 Nothing in this agreement shall limit or exclude the liability of either party for:
- 9.5.1 death or personal injury resulting from negligence;
  - 9.5.2 fraud or fraudulent misrepresentation;
  - 9.5.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 9.5.4 breach of section 2 of the Consumer Protection Act 1987; or
  - 9.5.5 the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

## 10 Termination

- 10.1 The Seller shall be entitled to terminate the Contract or any other contract for the supply of Goods between you and the Seller in the event that you are in material breach of any terms thereof. Upon termination the Seller shall be entitled to repossess the Goods or any other goods supplied under the Contract or such other contract where any sum remains outstanding in respect of the Goods or any other such goods. Furthermore, all sums due by you to the Seller at the date of termination of the Contract or any other such contract shall become immediately due and payable by you to the Seller without prejudice to the Seller's whole other rights and remedies.

- 10.2 In the event that you become apparently insolvent or have a trustee in sequestration appointed to your estate or the equivalent thereof in any foreign jurisdiction, the Seller will be entitled to terminate the Contract or any other contract for the supply of goods and upon termination shall be entitled to repossess the Goods or any other goods supplied under the Contract. In such event all sums due by you to the Seller at the date of termination of the Contract or any other such contract shall become immediately due and payable by you to the Seller, without prejudice to the Seller's whole other rights and remedies.