

<b>VOLAC MILK REPLACERS LIMITED STANDARD TERMS AND CONDITIONS of Purchase</b>			
Document No.	MR1	Revision No.	1 – 15.11.23
Owner	Alex Rippon	Revision Date	15.11.2023

## **Standard Terms and Conditions for the Purchase of Goods**

### **1. APPLICATION**

The Buyer orders and the Supplier, by accepting the Order, agrees that it will supply the Goods specified and subject to these Conditions which shall govern the Contract to the exclusion of all other terms and conditions proposed by the Supplier at any time. Any reference to the Supplier's quotation, specification, price list or like document shall be solely for the purpose of describing the Goods to be supplied and no terms and conditions endorsed upon, delivered with or referred to in such documents shall apply to the Contract in the absence of written agreement by us specifically referring to this clause 1 of these Conditions.

### **2. INTERPRETATION**

2.1 In these Conditions: -

<b>"Business Day"</b>	means any day other than a Saturday, Sunday or Bank Holiday;
<b>"the Buyer", "us" or "we"</b>	means Volac Milk Replacers Limited a company registered in Great Britain under Number 15085905 whose registered office is at 50 Fishers Lane, Orwell, Royston, Hertfordshire, SG8 8QX;
<b>"these Conditions"</b>	means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Supplier;
<b>"the Contract"</b>	means the contract for the sale and purchase of the Goods constituted by the Supplier's acceptance of the Order in accordance with these Conditions;
<b>"the Delivery Address"</b>	means the address stated on the Order for delivery of the Goods;
<b>"Electronic Invoice(s)"</b>	means an invoice (or invoices) issued under electronic invoicing or e-Invoicing being a system of raising invoices, under which invoices generated by one software can be read by any other software, eliminating the need for fresh data entry and errors. It is an invoice generated using a standardised format, where the electronic data of the invoice can be shared with others, thus ensuring interoperability of data,
<b>"the Goods"</b>	means the goods (including any instalment of the goods or any part of them, services or any other purchase) described in the Order;
<b>"the Order"</b>	means the Buyer's written confirmation of the Order (including by way of e-mail);
<b>"the Price"</b>	means the price of the Goods;
<b>"the Supplier" or "you"</b>	means the person so described in the Order;

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**“Specifications”**

any specification for the Goods including any plans, drawings, data or other information relating to the Goods; and

**“writing”**

includes facsimile, transmission, electronic mail and comparable means of communication.

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**3. THE CONTRACT**

3.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.2 The Order constitutes an offer by the Buyer to purchase the Goods subject to these Conditions.

3.3 The Order shall be deemed to be accepted on the earlier of (1) the Supplier issuing a written acceptance of the Order or (2) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence and until then we will not be contractually bound to you.

3.4 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Supplier.

3.5 If any of the terms of the contract conflict with or contradict each other those terms will over-ride each other in the following order of priority: (1) any express written agreement from us; (2) our Order; (3) these Conditions.

**4. SPECIFICATIONS**

4.1 The quantity, quality and description of the Goods will be as specified in our Order and these Conditions or as agreed by us in writing.

4.2 The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Buyer to the Supplier (**Buyer Materials**) and all rights in the Buyer Materials are and shall remain the exclusive property of the Buyer. The Supplier shall keep the Buyer Materials in safe custody at its own risk, maintain them in good condition until returned to the Buyer, and not dispose or use the same other than in accordance with the Buyer's written instructions. The Supplier shall not disclose to any third party or use any such Customer Materials except to the extent that they are or become public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.

4.3 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

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- 4.4 The Buyer shall be entitled to inspect or test any Goods during (and the Supplier's premises for) manufacture and storage on reasonable notice and if as a result of inspection or testing the Buyer is not satisfied that the Goods or the standards of their manufacture, storage or handling comply with the Contract or are unlikely to, and the Buyer so informs the Supplier within seven days of inspection or testing, the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and we shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.5 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 4.6 Unless otherwise stated, an Order is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those Goods, necessary to enable us to use them for their intended purposes. For the avoidance of doubt it is the responsibility of the Supplier to provide in a timely manner all the required information and documentation to satisfy all import and export custom clearance procedures.
- 4.7 When procuring energy services, products and equipment that have, or can have, a significant impact on energy use, the organisation shall inform suppliers that the procurement is partly evaluated on the basis of energy performance.

## **5. PRICE**

- 5.1 The Price of the Goods shall be as stated in the Order and, unless otherwise so stated, shall be:-
- 5.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
- 5.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.
- 5.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.

## **6. PAYMENT**

- 6.1 The Supplier shall be entitled to invoice the Buyer for the Goods on or at any time after completion of delivery, and each invoice shall quote the number of the Order
- 6.2 Unless approved otherwise by the Buyer all Supplier invoices are required to be Electronic Invoices and submitted electronically via an intermediate provider of the Buyer's choosing. Suppliers can use an existing provider to submit their invoices electronically, however, they need to be routed to the Buyer's provider of

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choice via an interoperation / interconnect. The Buyer will not accept Electronic Invoices directly from Suppliers and will not enter into Supplier specific invoicing arrangements.

- 6.3 Unless otherwise agreed in writing or stated in the Order, the Buyer shall pay the Price of the Goods within sixty days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods in question by the Buyer, but time for payment shall not be of the essence of the contract.
- 6.4 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Supplier.

## **7. DELIVERY**

- 7.1 The Goods shall be delivered to the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Address.
- 7.2 The Supplier shall ensure that:
- (a) deliveries shall be booked in at least 24 hours in advance;
  - (b) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - (c) the Goods are clearly identified with an external pallet label that uses a standard QR code with GS1 application identifiers and GTIN14 (Global Trade Identification Number);
  - (d) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (e) if the Supplier requires the Buyer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 7.3 Where it is agreed in writing that the date of delivery of the Goods is to be specified by the Supplier after the placing of the Order, the Supplier shall give the Buyer reasonable notice in writing of the specified date.
- 7.4 The time of delivery of the Goods is of the essence of the Contract.
- 7.5 Where the Deliverables are to be supplied in instalments, the Contract will be treated as a single contract and not severable.
- 7.6 The Buyer shall be entitled to reject any Deliverables which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery. The Buyer shall also have the right to reject the Goods as though they had not been accepted for seven days after any latent defect in the Goods has become apparent.

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7.7 The Supplier shall supply the Buyer in good time with any instructions or other information to enable the Buyer to accept delivery of the Goods.

7.8 Unless requested by the Supplier in accordance with clause 7.2 (c), the Buyer shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

7.9 Any Goods provided by us to you on a free issue basis will remain our absolute property throughout, and will be at your risk while the Goods are, or are supposed to be, in your possession and you are not to part with possession (save to us) unless with our express prior consent.

## **8. QUALITY**

8.1 Where the Supplier is not the manufacturer of the Goods, the Supplier shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Supplier.

8.2 The Supplier shall ensure that upon delivery, the Goods shall:

- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- (b) be reasonably fit for purpose;
- (c) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Supplier in writing and the Supplier has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgment of the Supplier;
- (d) correspond with their description and any applicable Specification;
- (e) where applicable, be free from defects in design, material and workmanship; and
- (f) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

8.3 The Supplier warrants that:

- (a) all claims made by it about the Goods in its advertising and promotional material are correct and can be relied upon; and
- (b) neither the sale and supply of the Goods, nor its proper use by us for an intended purpose, will breach any property rights in or about those Goods, including intellectual property rights, of any other person.

## **9. REMEDIES**

9.1 If the Goods are not delivered on the date they are due as referred to in clause 7.1, or do not comply with the undertakings set out in clause 8.2, then, without limiting any of its other rights or remedies, the Buyer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- (a) to terminate the Contract;

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- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by the Buyer in obtaining substitute goods from a third party; and
- (f) to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

9.2 If the Goods are not delivered on the due date, the Buyer may at its option claim or deduct 2 per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 20 per cent of the total price of the Goods. If the Buyer exercises its rights under this clause 9.2, it shall not be entitled to any of the remedies set out in clause 9.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

9.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

9.4 The Supplier shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Buyer as a result of or in connection with:

- (a) any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 9.4 shall survive termination of the Contract.

9.5 Our rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **10. RISK AND PROPERTY**

10.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

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10.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods has been agreed to be made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## **11. TERMINATION**

11.1 Without prejudice to our other rights to terminate the Contract as set out in these Conditions, we may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving you written notice, whereupon you shall discontinue all work on the Contract. In the event that the Buyer terminates the Contract more than 30 days before the agreed due date for delivery, the Buyer shall pay the Supplier whichever shall be the lesser of fair and reasonable compensation (as referred to below) or 2% of the Contract value in relation to the delivery due. Where less than 30 days' notice is given, the Buyer shall pay the Supplier fair and reasonable compensation for demonstrable work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

11.2 The Buyer shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:-

- (a) the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
- (c) the Supplier ceases or threatens to cease, to carry on business; or
- (d) any event analogous to the events mentioned above occurs or the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

## **12. FORCE MAJEURE**

12.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to clause 12.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 60 Business Days, the Buyer may terminate this Contract immediately by giving written notice to the Supplier

12.2 Clause 12.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

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**13. CONFIDENTIAL INFORMATION**

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

**14. GENERAL**

**14.1 Assignment and subcontracting**

- (a) The Buyer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Buyer's prior written consent.

**14.2 Notices**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or email.
- (b) A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action and for the purposes of this clause, "writing" shall not include e-mail.

**14.3 Severance**

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



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- 14.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Buyer.
- 14.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.