

## TERMS AND CONDITIONS FOR SUPPLY OF GOODS

### Baby Bottles Wholesale Limited

#### 1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Goods Specification;
- 1.2 "Customer" means the organisation or person who purchases goods and/or Goods from the Supplier;
- 1.3 "Goods Specification" means a statement of Goods, quotation or other similar document describing the Goods to be provided by the Supplier;
- 1.4 "Goods" means the articles to be supplied to the Customer the Supplier;
- 1.5 "List Price" means the list of prices of the Goods maintained by the Supplier as amended from time to time;
- 1.6 "Supplier" means **Baby Bottles Wholesale Limited, Crondal Road, Bayton Industrial Estate, Exhall, Coventry, CV7 9NH**

#### 2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for supply of Goods and the sale of Goods by the Supplier to the Customer to the exclusion of all other terms and conditions referred to, offered or relied on by the Customer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Customer, unless the Customer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Supplier in writing.

- 2.2 **Before the commencement of the sale of Goods the Supplier shall submit to the Customer a Goods Specification and/or Price List which shall specify the Goods to be supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of such.**

- 2.3 All Goods Specifications and/or Price Lists shall be subject to these Terms and Conditions.

- 2.4 The Supplier shall use all reasonable endeavours to complete the supply within estimated time frames but time shall not be of the essence in the performance of any Goods.

#### 3 FEES AND PAYMENT

- 3.1 The fees for the supply of goods are as set out in the Goods Specification or Suppliers Current Price List or such other price as the parties may agree in writing. The Supplier shall invoice the Customer at The price is exclusive of VAT or any other applicable costs. **Carriage shall be paid for by the [Customer OR Supplier].**

- 3.2 Invoiced amounts shall be due and payable within the agreed terms and conditions.

In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the Goods are provided.

- 3.3 If payment of the price or any part thereof is not made by the due date, the Supplier shall be entitled to:

3.3.1 require payment in advance of delivery in relation to any Goods not previously delivered;

3.3.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Customer for non-delivery or any delay in delivery

- 3.4 **Please note all accounts beyond our credit terms will be passed to our debt collection agency, Sinclair Goldberg Price Ltd. All accounts, without exception, will be subject to a surcharge of 15% plus vat to cover our costs in recovery. These accounts will also be subject to any legal costs incurred in obtaining settlement.**

#### 4 CUSTOMER'S OBLIGATIONS

- 4.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

4.1.1 co-operate with the Supplier;

4.1.2 provide the Supplier with any information reasonably required by the Supplier;

4.1.3 disclose all and any faults the Customer may believe exist immediately;

4.1.4 allow full inspection by the Supplier of any and all faults the Customer may believe as required, on notification;

4.1.5 not instruct any other to make alteration to and product without the express permission of the Supplier.

- 4.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 4.1.

- 4.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its

obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

4.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;

4.4.2 if applicable, the timetable for supply will be modified accordingly;

4.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

#### 5 DESCRIPTION

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. The Customer hereby affirms that it does not in any way rely on any description when entering into the contract.

#### 6 SAMPLE

Where a sample of the Goods is shown to and inspected by the Customer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Customer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

#### 7 DELIVERY

7.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Customer on the date specified by the Supplier. The Customer shall make all arrangements necessary to take delivery of the Goods. The Supplier's delivery agent is entitled to ask for identification from the receiver of the goods and reserves the right to withhold delivery should the receiver be unable to identify themselves to an acceptable standard.

7.2 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the contract.

7.3 If the Supplier is unable to deliver the Goods for reasons beyond its control, then the Supplier shall be entitled to place the Goods in storage until such times as delivery may be effected and the Customer shall be liable for any expense associated with such storage.

7.4 **The Customer shall be entitled to replacement Goods where the Goods have been damaged during transportation. The Customer must notify the Supplier of the damage within 24 hours of delivery. The Customer must notify the Supplier of any dispute within 7 days of delivery.**

7.5 Delivery will take place to ground floor, roadside access. For the avoidance of doubt, the Supplier shall have no liability in respect of any site delivery which can not be accessed. The delivery agent is not responsible for moving, carrying, re-locating such load other than to ground floor, roadside access.

#### 8 RISK

Risk in the Goods shall pass to the Customer at the moment the Goods are delivered and signed for by an authorised signatory. Where the Customer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it.

#### 9 TITLE

Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods.

#### 10 WARRANTY

10.1 The Supplier warrants that the Goods performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

10.2 Without prejudice to Clause 10.1, and except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Goods to be provided by the Supplier

10.3 Where the Goods have been manufactured by the Supplier and are found to be defective, the Supplier shall repair, or in its sole discretion, replace defective Goods free of charge within **[WARRANTY PERIOD]** from the date of delivery, subject to the following conditions:

10.3.1 the Customer notifying the Supplier in writing immediately upon the defect becoming apparent;

10.3.2 the defect being due to the faulty design, materials or workmanship of the Supplier.

10.4 Where the Goods have been manufactured and supplied to the Supplier by a third party, any warranty granted to the Supplier in respect of the Goods shall be passed on to the Customer.

10.5 The Supplier shall be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.

10.6 The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein, including, but without limitation, **Clauses 10 and 11** below.

#### 11 LIABILITY

11.1 No liability of any nature shall be incurred or accepted by the Supplier in respect of any representation made by the Supplier, or on its behalf, to the Customer, or to any party acting on its behalf, prior to the making of this contract where such representations were made in relation to:

- 11.1.1 the correspondence of the Goods with any description;  
 11.1.2 the quality of the Goods; or  
 11.1.3 the fitness of the Goods for any purpose whatsoever.
- 11.2 No liability of any nature shall be accepted by the Supplier to the Customer in respect of any express term of this contract where such term relates in any way to:  
 11.2.1 the correspondence of the Goods with any description;  
 11.2.2 the quality of the Goods; or  
 11.2.3 the fitness of the Goods for any purpose whatsoever.
- 11.3 All implied terms, conditions or warranties as to the correspondence of the Goods to any description or the satisfactory quality of the Goods or the fitness of the Goods for any purpose whatsoever (whether made known to the Supplier or not) are hereby excluded from the contract.
- 12 LIMITATION OF LIABILITY**
- 12.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the fees paid by the Customer to which the claim relates.
- 12.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 12.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.
- 12.4 Where any court or arbitrator determines that any part of Clause 12 above is, for whatever reason, unenforceable, the Supplier shall be liable for all loss or damage suffered by the Customer but in an amount not exceeding the contract price.
- 13 INDEMNIFICATION**
- The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any Goods provided by the Supplier in accordance with the Goods Specification infringes a patent, copyright or trade secret or other similar right of a third party.
- 14 TERMINATION**
- Either party may terminate this Agreement forthwith by notice in writing to the other if:
- 14.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
- 14.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 14.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 14.4 the other party ceases to carry on its business or substantially the whole of its business; or
- 14.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

- 15 FORCE MAJEURE**
- Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or Goods, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.
- 16 INDEPENDENT PARTIES**
- The Supplier and the Customer are parties independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the Goods being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement.
- 17 ASSIGNMENT**
- The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.
- 18 SEVERABILITY**
- If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.
- 19 WAIVER**
- The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.
- 20 NOTICES**
- Any notice to be given by either party to the other may be served by email, fax, personal Goods or by post to the address of the other party given in the Goods Specification or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.
- 21 ENTIRE AGREEMENT**
- This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.
- 22 NO THIRD PARTIES**
- Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.
- 23 GOVERNING LAW AND JURISDICTION**
- This Agreement shall be governed by and construed in accordance with the law of England & Wales and the parties hereby submit to the exclusive jurisdiction of the English & Welsh courts