

TERMS AND CONDITIONS FOR SUPPLY OF GOODS:

Baker Bennett Limited

IMPORTANT

1. Defined terms are indicated by the use of capital letters. The meaning of each of these terms is set out in Clause 1.

BERMANS

Exchange Station

Tithebarn Street

Liverpool

L2 2QP

Ref: 175/BAK.34.1

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The Customer's attention is particularly drawn to the provisions of Clause 10 (Limitation of Liability).

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Baker Bennett: Baker Bennett Limited registered in England and Wales with company number 02914228 at the registered office of 8 - 9 St Chads Court, School Lane, Rochdale, Lancashire, OL16 1QU.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in Clause 2.1.

Conditions: these terms and conditions as amended from time to time by Baker Bennett.

Confidential Information: any information, which by its nature is confidential, concerning the business, affairs, customers, clients or suppliers of the other party.

Contract: the contract between Baker Bennett and the Customer for the supply of Goods in accordance with these Conditions.

Customer: the person, business, organisation or entity who purchases Goods from Baker Bennett.

Data Protection Legislation: means:

- (a) the Data Protection Act 2018;
- (b) the EC Data Protection Directive (95/46/EC);
- (c) the EC Electronic Communications Data Protection Directive (2002/58/EC);
- (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003: and
- (e) the General Data Protection Regulation.

and all other applicable Laws and regulations relating to processing of personal data and privacy including (where appropriate) guidance and codes of practice issued by the Information Commissioner.

Delivery Location: has the meaning given in Clause 3.1.

Expenses: any out-of-pocket costs incurred by Baker Bennett in fulfilling an Order, including (without limitation):

- (a) Shipping costs, carriage, freight, and handling charges;
- (b) insurance;

- (c) currency conversion and banking charges applicable to the payment method used;
- (d) value added tax or any other applicable sales tax in the country in which Baker Bennett is resident; and
- (e) any customs, import, tariff or other duties charged in respect of the sale and importation of Goods into the country in which the Customer is resident or the Delivery Location is located (this includes any future customs, import, tariff or other duties imposed following Brexit).

Force Majeure Event: an event or circumstance beyond a party's reasonable control but shall not apply to a party's obligation to make any payment and includes any event arising as a cause of the United Kingdom leaving the European Union.

Goods: sweet & savoury biscuits, free from, ambient desserts & bakery goods and such other goods as are supplied by Baker Bennett from time to time.

Order: the Customer's offer to purchase Goods from Baker Bennet via EDI, Fax, Email or verbal telephone conversation at the quotation selling price and terms;

Quotation: an estimate of price or a price at which Baker Bennett is willing to sell a certain number of Goods. The quotation shall not constitute an offer but only an invitation for the Customer to place an Order in accordance with these Conditions.

2. BASIS OF CONTRACT

- 2.1 An Order is accepted upon customer placing the Order in accordance with Condition 2.4, at which point, and on which date, the contract shall come into existence.
- 2.2 Any samples, descriptive matter or advertising issued by Baker Bennett and any descriptions of the Goods or illustrations contained in Baker Bennett's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of Baker Bennett and the Customer.
- 2.4 Any Quotation given by Baker Bennett is only valid for a period of twelve weeks from its date of issue and may be withdrawn or amended at any time prior to Baker Bennett accepting the Customer's Order.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Baker Bennett shall be subject to correction without any liability on the part of Baker Bennett.

3. DELIVERY OF GOODS

- 3.1 Baker Bennett shall deliver the Goods to the location set out in the Order or such other location as the parties may agree the **(Delivery Location)**.
- 3.2 Baker Bennett will arrange delivery in accordance with any agreed date and delivery slot.
- 3.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 3.4 The Customer shall check each delivery of Goods and issue a signed proof of delivery to the driver. If the delivery of goods are signed for 'unchecked' the Customer has 48hr to give written notice of any shortage, damage identifiable on reasonable inspection (relating to physical appearance) or discrepancy. Where delivery is on an agreed "drop and drive" basis, goods shall be deemed accepted when checked in. Customer will provide such information, including photo evidence of damages, in order to help verify and speed up the claim, written notice of any query or issue to be emailed to Supplychain@bakerbennett.co.uk within the given time frame.
- 3.5 If the Customer fails to give notice as specified in Clause 3.4 then, the Customer shall be deemed to have accepted the delivery of the Goods in question and Baker Bennett shall have no liability to the Customer with respect to that delivery.
- 3.6 Baker Bennett shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Baker Bennett with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods. If Baker Bennett fails to deliver the Goods due to an issue or a Force Majeure Event, the Goods will be re-booked with a new delivery date/time or the order will be cancelled and a new order issued.
- 3.7 If the Customer fails to accept delivery of the Goods within 3 Business Days of Baker Bennett attempting delivery on the agreed delivery date, (other than through a Force Majeure Event or by Baker Bennett's failure to comply with its obligations under the Contract), Goods manufactured specifically for a Customer cannot be cancelled once manufacturing has commenced. If therefore, the Customer fails to accept delivery in accordance with the Order or agreed delivery date, without affecting any other right or remedy Baker Bennett may have:
- (a) delivery of the Goods is accepted to have been completed at 9.00 am on the third Business Day following the day on which Baker Bennett attempted delivery or notified the Customer that the Goods were ready; and
 - (b) thereafter Baker Bennett may dispose of the Goods and charge the Customer for the Goods and for all related costs and expenses (including insurance).

4. QUALITY OF GOODS

- 4.1 Baker Bennett warrants that on delivery, and for a period from the date of completed delivery until the best before date of each of the Goods (**Warranty Period**), the Goods shall:
- (a) materially conform with Product description/specification; and
 - (b) be fit for any purpose held out by Baker Bennett to the Customer; and
 - (c) packaging and labelling of goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 4.2 Where any Good is in breach of the warranty, Baker Bennett shall, subject to agreement with the Customer, replace the damaged Goods, or refund the price of the damaged Goods in full if:
- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 4.1;
 - (b) the Customer provides such evidence (photo, description of damage etc.) as Baker Bennett reasonably require;
 - (c) Baker Bennett is given a reasonable opportunity of examining such Goods; and
 - (d) the Customer (if asked to do so by Baker Bennett) returns such Goods to Baker Bennett's place of business.
- 4.3 Baker Bennett shall not be liable for the Goods' failure to comply with the warranty in Clause 4.1 if:
- (a) the damage arises because the Customer failed to follow Baker Bennett's oral or written instructions as to the storage, or handling of the Goods or (if there are none) good trade practice;
 - (b) the Customer alters such Goods without the written consent of Baker Bennett;
 - (c) the damage arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (d) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.4 Except as provided in this Clause 4, Baker Bennett shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 4.1.
- 4.5 These Conditions shall apply to any replacement Goods supplied by Baker Bennett.

5. TITLE AND RISK –

- 5.1 The risk in the Goods shall pass to the Customer when the Goods are delivered pursuant to Clause 3.
- 5.2 Goods retained for return to Baker Bennett shall be stored by the Customer in accordance with Baker Bennett's reasonable instructions, and otherwise in accordance with good industry practice until collection is made.

6. CHARGES AND PAYMENT

- 6.1 The price for Goods:
- (a) shall be the price set out in the Order Confirmation or as otherwise agreed between Baker Bennett and the Customer; and
 - (b) shall be inclusive of all Expenses incurred by Baker Bennett for supplying the Goods.
- 6.2 Baker Bennett reserves the right to increase the price of the Goods, by giving reasonable notice to the Customer before delivery, to reflect in the cost of the Goods to Baker Bennett that is due to any factor beyond the control of Baker Bennett (including foreign exchange fluctuations, increases in taxes and duties, including tariffs arising from Britain's exit from the European Union) and increases in labour, materials and other manufacturing costs).
- 6.3 Baker Bennett shall invoice the Customer upon receipt of proof of delivery or confirmation the Goods have been delivered in accordance with Condition 3.
- 6.4 The Customer shall pay each invoice submitted by Baker Bennett:
- (a) in accordance with any credit terms agreed by Baker Bennett and confirmed in writing to the Customer; or
 - (b) where no date is agreed, within 30 days of the date of the invoice; and
 - (c) in full and in cleared funds to a bank account nominated in writing by Baker Bennett.
- 6.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Baker Bennett to the Customer, the Customer shall, on receipt of a valid VAT invoice from Baker Bennett, pay to Baker Bennett such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 6.6 If the Customer fails to make a payment due to Baker Bennett under the Contract by the due date, then, without limiting Baker Bennett's remedies under Clause 11 (Termination), the Customer shall pay interest on the overdue sum from the due date

until payment of the overdue sum, whether before or after judgment. Interest under this Clause 6.6 will accrue each day at 4% a year above NatWest's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7. DATA PROTECTION

7.1 In relation to all personal data, the parties shall at all times comply with the Data Protection Legislation and each party shall not do or omit to do anything which causes the other party to breach the Data Protection Legislation or contravene the terms of any registration, notification or authorisation.

7.2 Without prejudice to the generality of Clause 7.1, the parties agree that the processing of personal data will be in connection with contact details of each of the parties employees, officers or agents, obtained for, and in performance of, the Contract, and as such each party will rely upon legitimate interest.

8. CONFIDENTIALITY

8.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients of the other party, except as permitted by Clause 8.2.

8.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 8; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9. INTELLECTUAL PROPERTY LICENCE

Customer warrants and separately represents to Baker Bennett that it is fully entitled to use, and to authorise Baker Bennett to use in the production of the Goods intellectual property contained in any product specification or packaging provided by the Customer for use with the Goods. The Customer shall indemnify and keep indemnified Baker Bennett against all costs claims and liabilities suffered or incurred by Baker Bennett from any claim that its use of such intellectual property infringes the rights of any third party.

10. LIMITATION OF LIABILITY: The Customer's Attention is Particularly Drawn to this Clause 10.

10.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

10.2 Subject to Clause 10.1, Baker Bennett's total liability to the Customer whether arising in contract tort, breach of statutory duty or otherwise shall not exceed one hundred and twenty percent (120%) of the value of the Order which gave rise to the claim.

10.3 This Clause 10.3 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to Clause 10.1, Baker Bennett shall not be liable for the following types of loss, which are wholly excluded:
 - (i) Loss of profits.
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.

10.4 Unless the Customer notifies Baker Bennett that it intends to make a claim in respect of an event within the notice period, Baker Bennett shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire twelve months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.5 This Clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract (other than a failure to pay any amount when due) and (if such breach is remediable) fails to remedy that breach within 20 days after receipt of notice in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.2 Without affecting any other right or remedy available to it, Baker Bennett may terminate the Contract with immediate effect by giving written notice to the Customer if:
 - (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - (b) the customer suffers any event the result of which could damage the name or reputation of Baker Bennett.
- 11.3 Without affecting any other right or remedy available to it, Baker Bennett may suspend and/or cancel the supply of Goods under the Contract or any other contract between the Customer and Baker Bennett if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 11.1(b) to Clause 11.1(d), or Baker Bennett reasonably believes that the Customer is about to become subject to any of them.

12. CONSEQUENCES OF TERMINATION

- 12.1 On termination of the Contract the Customer shall immediately pay to Baker Bennett all of Baker Bennett's outstanding unpaid invoices and interest and, in respect of the Goods supplied but for which no invoice has been submitted, Baker Bennett shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 12.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

13. FORCE MAJEURE

13.1 Baker Bennett shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from Force Majeure Events.

13.1 Whilst Baker Bennett is making prudent provision for the United Kingdom leaving the European Union, Baker Bennett reserves the right to amend or cancel, without liability to the Customer, any Contract which as a result of the United Kingdom leaving the European Union, affects Baker Bennetts ability to meet the Contract. Where Baker Bennett amends any Contract, the Customer shall be entitled to cancel such Contract in writing within five Business Days of being notified of the change.

14. GENERAL

14.1 Assignment and other dealings.

- (a) Baker Bennett may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Baker Bennett.

14.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by fax to its main fax number; or
 - (iii) sent by email to the addresses specified on the Order and the Order Confirmation respectively.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 14.2(b)(iii), business hours means 9.00am to

5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This Clause 14.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 **Entire Agreement.** Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 14.6 **Third Party Rights.**

 - (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 14.7 **Governing Law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
- 14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.