

# DAIRY CREST LIMITED – STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF SERVICES

## 1. DEFINITIONS AND INTERPRETATION

In these Conditions, the following definitions and rules of interpretation apply:

**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 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.9.

**Contract:** the contract between the Customer and the Supplier for the purchase of Services in accordance with these Conditions.

**Control:** shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Customer:** Dairy Crest Limited (registered in England and Wales with company number 02085882) or, if different, the member of the Group which has entered into the Contract with the Supplier.

**Customer Materials:** has the meaning set out in clause 3.3(j).

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Group:** Dairy Crest Group plc and any holding company or subsidiary of Dairy Crest Group plc and any subsidiary of any such holding company, as defined in section 1159 of the Companies Act 2006.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mandatory Requirements:** Modern Slavery Laws, Relevant Policies and Relevant Requirements.

**Modern Slavery Laws:** all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

**Order:** the Customer's order for the supply of Services, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation or as otherwise recorded in writing or agreed between the parties.

**Relevant Policies:** the Customer's Supplier Corporate Responsibility Policy as updated from time to time and available on the Customer's website or on request from the Customer and any other policies which shall be notified to the Supplier from time to time.

**Relevant Requirements:** all applicable laws, statutes, regulations and codes relating to anti-bribery and corruption including, without limitation, the Bribery Act 2010.

**Services:** the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Order.

**Specification:** the description or specification for the Services, including key performance indicators and/or service levels if applicable, agreed in writing by the Customer and the Supplier.

**Supplier:** the person or firm from whom the Customer purchases the Services.

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). (b) A reference to a **statute or statutory provision** is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision. (c) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. BASIS OF CONTRACT

**2.1** The Order constitutes an offer by the Customer to purchase the Services from the Supplier in accordance with these Conditions.

**2.2** The Order shall be deemed to be accepted on the earlier of: (a) the Supplier issuing written acceptance of the Order; or (b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).

**2.3** 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.

**2.5** These Conditions shall be incorporated into the Contract and any future contract between the Customer and the Supplier for the supply of Services.

**2.6** The purchase of Services by the Customer pursuant to the Contract, and each Order placed under it, shall be on a non-exclusive basis and the Supplier acknowledges that the Customer may appoint any other person to provide services the same as, or similar to, the Services.

## 3. SUPPLY OF SERVICES

**3.1** The Supplier shall from the Commencement Date or the date set out in the Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

**3.2** The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

**3.3** In providing the Services, the Supplier shall ensure and hereby warrants that it shall: (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer; (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract; (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier; (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services; (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design; (g) obtain and at all times maintain all licences, permissions, authorisations, consents and permits that it needs for the provision of the Services; (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Requirements; (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises; (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, only use the Customer Materials for the provision of the Services and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and (l) comply with any additional obligations as set out in the Specification.

## 4. CUSTOMER REMEDIES

**4.1** If the Supplier fails to perform the Services by the applicable date or fails to comply with the undertakings set out in clause 3, the Customer shall, without limiting any of its other rights or remedies, have the right to any one or more of the following remedies: (a) to terminate the Order or Contract with immediate effect by giving written notice to the Supplier; (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make; (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party; (d) to require a refund from the Supplier of sums paid in advance for the Services that the Supplier has not provided; and (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

**4.2** These Conditions shall extend to any substituted or remedial services supplied by the Supplier.

**4.3** The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

## 5. CUSTOMER'S OBLIGATIONS

**5.1** The Customer shall: (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises, plant and equipment for the purpose of providing the Services; and (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## 6. CHARGES AND PAYMENT

**6.1** The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. The Supplier shall not be entitled to charge the Customer any additional costs and expenses associated with the provision of Services, unless otherwise agreed in writing. Any expenses agreed between the parties will be subject to the Customer's expenses policy and must be agreed prior to the expense being incurred.

**6.2** The Supplier shall invoice the Customer monthly in arrears or as otherwise agreed. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

**6.3** In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within 60 days from receipt of a valid and undisputed invoice.

**6.4** All amounts payable under the Contract are exclusive of value added tax (VAT).

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**6.5** If the Customer disputes any part of an amount invoiced by the Supplier, the Customer will notify the Supplier in writing of that dispute and the amount that it claims should have been invoiced. Provided the Supplier issues a credit note for the disputed sum, the Customer shall pay that part of the invoice which is not disputed and will be entitled to withhold payment of the disputed sum.

**6.6** Save for where clause 6.5 applies, any undisputed sums payable by either party under the Contract which remain outstanding after the agreed date for payment shall carry interest (both before and after judgment) on a daily basis at an annual rate equal to 2% above the Bank of England base rate from time to time.

**6.7** The Supplier shall maintain complete and accurate records detailing all actions taken in connection with the performance of its obligations under the Contract including records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

**6.8** The Customer may, without limiting any other rights or remedies it may have, set-off any amount owed to it or its Group by the Supplier against any amounts payable by it or its Group to the Supplier under the Contract or any other contract in force between the parties.

## **7. CHANGE REQUESTS**

**7.1** At any point following the Order for the Services, the Customer may request a change to the Contract (**Change**) and will notify such a change to the Supplier in writing setting out the details of the Change. Within 14 days of receiving a Change notice from the Customer, the Supplier shall prepare a written proposal on the impact of the Change (**Proposal**), including any revision to the charges or delivery of the Services and how it proposes to implement the Change. If the Supplier does not provide the Customer with the Proposal within this time frame, the Customer may, at its sole discretion terminate the Order or Contract.

**7.2** Upon receipt of a Proposal, the Customer may: **(a)** accept the Supplier's Proposal and instruct the Supplier to proceed with the Change to the Services; or **(b)** reject the Supplier's Proposal in which case the Customer can either: **(i)** terminate the Order or Contract; or **(ii)** instruct the Supplier to continue to supply the Services in accordance with the original Contract.

## **8. INTELLECTUAL PROPERTY RIGHTS**

**8.1** The Customer owns and shall continue to own all property and other Intellectual Property Rights in the Customer Materials. Any Intellectual Property Rights owned by the Supplier prior to the Commencement Date of the Contract shall continue to vest in the Supplier (**Supplier Materials**).

**8.2** The Supplier grants to the Customer a royalty free, worldwide, irrevocable, non-exclusive, sub-licensable licence to use, copy, adapt and modify the Supplier Materials for its business purposes.

**8.3** The Customer shall own all Intellectual Property Rights in the Deliverables and any other Intellectual Property Rights arising as a result of the Supplier performing the Services (**Arising IPR**). The Customer grants to the Supplier a non-exclusive, non-sublicensable, worldwide, royalty free, revocable licence to use the Deliverables and Customer Materials solely for the provision of the Services to the Customer.

**8.4** The Supplier shall, and shall procure that any employees, agents and sub-contractors shall, at the Supplier's cost, execute all such documents and do all such acts and things as the Customer may reasonably request from time to time in order to secure the full right, title and interest of the Customer in the Arising IPR.

## **9. INDEMNITY**

**9.1** The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any act or omission of the Supplier or its employees, agents, sub-contractors or suppliers (whether direct or indirect) in connection with the Services and/or the Contract including but without limiting the generality of this clause: **(a)** any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the receipt, use or supply of the Services (excluding the Customer Materials); **(b)** any claim made against the Customer by a third party for death, personal injury or damage to property arising out of the provision of the Services; **(c)** any claim made against the Customer by a third party arising out of or in connection with the supply of the Services; and **(d)** any claim by the Supplier's employees or ex-employees, for breach of contract, unfair or wrongful dismissal, redundancy or any other claim whether statutory or contractual or otherwise, incurred by virtue of the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any subsequent or related legislation.

**9.2** This clause 9 shall survive termination of the Contract.

## **10. INSURANCE**

During the term of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, employers liability insurance, professional indemnity insurance and public liability insurance each with an indemnity limit of £5M to cover such heads of liability as may arise under or in connection with the Contract, and shall,

on the Customer's request, provide to the Customer appropriate written evidence that such insurance is in place.

## **11. CONFIDENTIALITY**

**11.1** Each party undertakes that it shall not at any time disclose to any person any confidential information including information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

**11.2** Each party may disclose the other party's confidential information:

**(a)** to its employees, officers, representatives, sub-contractors 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, sub-contractors or advisers to whom it discloses the other party's confidential information must comply with this clause 11; and **(b)** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

## **12. TERMINATION**

**12.1** Without affecting any other right or remedy available to it, the Customer may terminate the Order or Contract: **(a)** with immediate effect by giving written notice to the Supplier if: **(i)** there is a change of Control of the Supplier; or **(ii)** the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or **(iii)** the Supplier commits a breach of clause 3.3 (g), 3.3 (h) or 3.3 (i); or **(b)** for convenience by giving the Supplier one month's written notice; or **(c)** in whole or in part at any time before completion of the Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination.

**12.2** 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 any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so or commits persistent breaches of any of the terms of the Contract; **(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 **(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.

## **13. CONSEQUENCES OF TERMINATION**

**13.1** On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

**13.2** Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**13.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **14. FORCE MAJEURE**

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that both parties shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent either party from carrying out its obligations under the Contract for a continuous period of more than 30 days, either party may terminate this Contract immediately by giving written notice to the other party.

## **15. GENERAL**

**15.1 Assignment and other dealings.** **(a)** The Customer may at any time assign, novate, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights and obligations under the Contract. **(b)** The Supplier shall not assign, novate, transfer, charge, sub-contract or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

**15.2 Notices.** **(a)** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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). **(b)** A notice or other communication shall

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be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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. (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**15.3 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.

**15.4 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 breach or default. 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.

**15.5 Sub-contractor.** The Supplier shall not sub-contract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any sub-contracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its sub-contractors as if they were its own.

**15.6 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**15.7 Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**15.8 Third party rights.** Except as expressly set out in the Contract, it is not intended that any third party shall have the right to enforce a provision of the Contract under the Contracts (Rights of Third Parties) Act 1999.

**15.9 Variation.** Any variation of the Contract, is not effective unless agreed in writing and signed by or on behalf of each of the parties.

**15.10 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 law of England and Wales.

**15.11 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.

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