

# Lovington's Ice Cream Ltd - STANDARD CONDITIONS OF SALE

1. In these conditions of sale, unless the context otherwise requires:
    - 1.1 the following words and expressions will have the following meanings:

"Applicable Law" any (a) statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal); and/or (b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; which relates to the Contract and/or the Goods;

"Business Day" a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales;

"Buyer" the person whose order for the Goods is accepted by Lovingtons Ice Cream Ltd in accordance with Condition 2.1;

Lovingtons Ice Cream Ltd (registered number 03306530) whose registered office is at The Dairy, Lovington, Castle Cary, Somerset. BA7 7PP

"Conditions" these standard conditions of sale together with any special terms agreed in writing between the Buyer and Lovingtons Ice Cream Ltd.

"Contract" a contract between Lovingtons Ice Cream Ltd and the Buyer for the sale and purchase of the Goods formed in accordance with Condition 2.1;

"Force Majeure Event" any event or circumstance to the extent it is beyond the reasonable control of Lovingtons Ice Cream Ltd.

"Goods" any goods which Lovingtons Ice Cream Ltd supplies to the Buyer (including any of them or any part of them) under a Contract;

"Insolvent" the Buyer is Insolvent where it: (a) ceases, threatens to cease or, in the reasonable opinion of Lovingtons Ice Cream Ltd, appears likely to cease, to trade; (b) goes into liquidation or bankruptcy (or has a petition for its winding up or bankruptcy presented or passes a resolution for its winding up); (c) goes into administration (or is subject to an administration order or an application for an administration order made in respect of it); (d) has a receiver or administrator appointed over some or all of its assets or proposes an arrangement or compromise with its creditors; or (e) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;

"Intellectual Property Rights" includes all (a) patents and applications for patents, trademarks and domain names and applications for the same, unregistered trademarks and rights in trade names and business names, copyright and moral rights (including copyright in recipes), know how, database rights, rights in designs and rights in inventions; and (b) rights of the same or similar effect or nature as any of those in paragraph (a) of this definition

"Prices" the price(s) of the Goods set out in Lovingtons Ice Cream Ltd price list in force at the date of dispatch of the Goods or such other price(s) as agreed by the parties in writing plus any applicable carriage and delivery charges;
  - 1.2 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as a reference to the statute or statutory provision as modified and/or replaced from time to time; and
  - 1.3 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
2. FORMATION AND INCORPORATION
  - 2.1 Each order or acceptance of a quotation for Goods will be deemed to be an offer by the Buyer to purchase Goods upon the Conditions. The Contract is formed when the Buyer's order is accepted by Lovingtons Ice Cream Ltd.
  - 2.2 Subject to Condition 2.5, the Contract will be upon the Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
3. THE GOODS
  - 3.1 All samples, descriptive matter and advertising issued by Lovingtons Ice Cream Ltd and any descriptions or illustrations contained in Lovingtons Ice Cream Ltd catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
  - 3.2 Lovingtons Ice Cream Ltd warrants that, at the time of delivery, (i) the Goods will comply in all material respects with the specification agreed in writing by the parties; (ii) all Goods which are (or are comprised of) foodstuffs will be fit for human consumption; and (iii) the Goods will comply will Applicable Law.
  - 3.3 Lovingtons Ice Cream Ltd may make any changes to the specification, design, materials, ingredients, recipe or finishes of the Goods which:
    - 3.3.1 are required to conform with any Applicable Laws; and/or
    - 3.3.2 do not materially affect their quality.
4. PRICE AND PAYMENT
  - 4.1 Lovingtons Ice Cream Ltd will be entitled to vary the Prices following any changes in the specification made at the request of the Buyer and agreed by Lovingtons Ice Cream Ltd or to cover any extra expense as a result of the Buyer's instructions or lack of instructions or to comply with the requirements referred to in Condition 3.3.1. Lovingtons Ice Cream Ltd will give written notice of the variation to the Buyer.
  - 4.2 The Buyer will pay the Prices to Lovingtons Ice Cream Ltd in accordance with this Condition 4.
  - 4.3 Lovingtons Ice Cream Ltd will be entitled to invoice the Buyer for the Prices for the Goods and any relevant insurance, carriage and delivery charges payable by the Buyer in addition to the Prices following delivery.
  - 4.4 Each invoice will be payable by the Buyer in pounds sterling in cleared funds within 28 days following the date on which the invoice is issued.
  - 4.5 Time will be of the essence in respect of the payment timescales set out in Condition 4.4 and any timescales which may be substituted for them by the agreement in writing of the parties.
  - 4.6 Save as otherwise expressly provided in the Contract or required by law, all payments to be made by the Buyer to Lovingtons Ice Cream Ltd under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
  - 4.7 If the Buyer fails to make any payment due to Lovingtons Ice Cream Ltd under the Contract on or before the due date Lovingtons Ice Cream Ltd may withhold further deliveries of Goods until payment of all overdue sums has been made and to cancel any or all orders accepted under Condition 2.1 which have not yet been delivered.
  - 4.8 Following termination of the Contract:
    - 4.8.1 Lovingtons Ice Cream Ltd will be entitled to invoice all Prices and any other applicable costs incurred which have not yet been invoiced; and
    - 4.8.2 all invoices (including any invoices issued under Condition 4.8.1) will become immediately due and payable by the Buyer.
5. DELIVERY
  - 5.1 Lovingtons Ice Cream Ltd will deliver the Goods to the location agreed by the parties in writing (the "Delivery Point").
  - 5.2 Delivery of the Goods will be accepted at any time of day. The Buyer will be responsible for off-loading the Goods at the Delivery Point and will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for off-loading the Goods.
  - 5.3 Lovingtons Ice Cream Ltd will use reasonable endeavours to deliver each of the Buyer's orders for the Goods within the time agreed when the Buyer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, Lovingtons Ice Cream Ltd is unable for any reason to fulfil any delivery or performance on the specified date, Lovingtons Ice Cream Ltd will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Lovingtons Ice Cream Ltd have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery except as set out in this Condition. Any delay in delivery will not entitle the Buyer to cancel the order unless and until the Buyer has given five days' written notice to Lovingtons Ice Cream Ltd requiring the delivery to be made and Lovingtons Ice Cream Ltd has not fulfilled the delivery within that period. If the Buyer cancels the order in accordance with this Condition 5.3 then:
    - 5.3.1 Lovingtons Ice Cream Ltd will refund to the Buyer any sums which the Buyer has paid to Lovingtons Ice Cream Ltd in respect of that order or part of the order which has been cancelled; and
    - 5.3.2 the Buyer will be under no liability to make any further payments under Condition 4.2 in respect of that order or part of the order which has been cancelled.
  - 5.4 If the Goods are unable to be delivered due to any act or omission of the Buyer, the Goods will be deemed to have been delivered on the due date and (without prejudice to its other rights) Lovingtons Ice Cream Ltd may (at the Buyer's cost) store or arrange for storage of the Goods until actual delivery and/or sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.
  - 5.5 Lovingtons Ice Cream Ltd may deliver the Goods by separate instalments. Lovingtons Ice Cream Ltd will be entitled to invoice the Price for each instalment separately in accordance with Condition 4.3. Each instalment will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment.
6. PASSING OF RISK AND RETENTION OF TITLE
  - 6.1 Risk of damage to or loss of the Goods will pass to the Buyer on completion of delivery or on deemed delivery of the Goods in accordance with Condition 5.
  - 6.2 Legal and beneficial ownership of the Goods will not pass to the Buyer until Lovingtons Ice Cream Ltd has received in full in cleared funds:
    - 6.2.1 all sums due to it in respect of the Goods; and
    - 6.2.2 all other sums which are or which become due to Lovingtons Ice Cream Ltd from the Buyer on any account whatsoever.
  - 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer will:
    - 6.3.1 hold the Goods on a fiduciary basis as a Bailee for Lovington Ice Cream Ltd;
    - 6.3.2 store the Goods (at no cost to Lovingtons Ice Cream Ltd) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the property of Lovington's Ice Cream Ltd;

## Lovington's Ice Cream Ltd - STANDARD CONDITIONS OF SALE

- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 maintain the Goods in satisfactory condition; and
- 6.3.5 keep the Goods insured for their full price against all risks from the date of delivery; but the Buyer may use and resell the Goods in the ordinary course of its business. Any sale of Goods by the Buyer pursuant to this Condition 6.3 will be a sale of the Buyer's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale.
- 6.4 The Buyer's right to possession, use and resale of the Goods will terminate immediately:
- 6.4.1 if the Buyer becomes Insolvent;
- 6.4.2 on Lovingtons Ice Cream Ltd giving the Buyer written notice that it has any reasonable concerns regarding the financial standing of the Buyer;
- 6.4.3 if the Buyer fails to pay any sum due to Lovingtons Ice Cream Ltd under a Contract on or before the due date or any other contract between Lovingtons Ice Cream Ltd and the Buyer; or
- 6.4.4 if the Buyer encumbers or in any way charges any of the Goods.
- 6.5 The Buyer grants Lovingtons Ice Cream Ltd, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession, use and resale has terminated, to recover them.
- 6.6 If the Buyer's right to possession, use and resale of the Goods terminates in accordance with Condition 6.4, Lovingtons Ice Cream Ltd will be entitled to issue the Buyer with a credit note for all or any part of the price of the Goods together with value added tax thereon.
7. EXCLUSION OF LIABILITY
- 7.1 In the event of any failure by Lovingtons Ice Cream Ltd to fulfil any delivery or performance on the date required by Condition 5.3 above, the remedies of the Buyer will be limited to damages.
- 7.2 Subject to Condition 7.5, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.
- 7.3 Subject to Conditions 7.4 and 7.5, Lovingtons Ice Cream Ltd maximum aggregate liability arising out of or in connection with a Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform Lovingtons Ice Cream Ltd or defect or delay in performance of, any of Lovingtons Ice Cream Ltd's obligations under the Contract and/or any defect in any of the Goods and/or any use made or resale of any of the Goods by the Customer or of any product incorporating any of the Goods shall be limited to 125% of the aggregate Price paid or payable under the Contract.
- 7.4 Subject to Condition 7.5, Lovingtons Ice Cream Ltd shall have no liability to the Buyer for:
- 7.4.1 for any damage to or deterioration in any Goods arising from or in connection with any failure by or on behalf of the Buyer to follow instructions and/or good practices in relation to the storage, transportation and/or use of the Goods;
- 7.4.2 (in each case whether direct or indirect) (i) any loss of profit; (ii) loss of revenue, loss of production or loss of business; (iii) loss of goodwill, loss of reputation or loss of opportunity; (iv) loss of anticipated saving or loss of margin; (v) liability of the Buyer to third parties; or
- 7.4.3 indirect, consequential or special loss, arising out of or in connection with a Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of Lovingtons Ice Cream Ltd obligations under the Contract.
- 7.5 Nothing in the Contract shall operate to exclude or restrict Lovingtons Ice Cream Ltd liability (if any) to the Buyer (i) for breach of its obligations arising under section 12 of the Sale of Goods Act 1979; (ii) for breach of its obligations arising under Section 2 of the Supply of Goods and Services Act 1982; (iii) for death or personal injury resulting from its negligence; (iv) for its fraud or fraudulent misrepresentation; or (v) for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
8. FORCE MAJEURE
- 8.1 Lovingtons Ice Cream Ltd will not be in breach of the Contract or otherwise liable to the Customer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event. The Buyer will continue to pay the prices for any Goods which Lovingtons Ice Cream Ltd continues to supply notwithstanding the occurrence of the Force Majeure Event.
- 8.2 If Lovingtons Ice Cream Ltd is unable to deliver or the Buyer is unable to take delivery of a material part of the Goods for a period of more than 14 days due to a Force Majeure Event which gives rise to relief from liability under Condition 8.1, Lovingtons Ice Cream Ltd will be entitled to terminate the Contract immediately by giving written notice to that effect to the Buyer.
9. TERMINATION
- 9.1 If the Buyer:
- 9.1.1 commits a material breach of the Contract which cannot be remedied; or
- 9.1.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within 30 days of a written notice setting out the breach and requiring it to be remedied being given by Lovingtons Ice Cream Ltd
- Lovingtons Ice Cream Ltd may terminate the Contract immediately by giving written notice to that effect to the Buyer.
- 9.2 Lovingtons Ice Cream Ltd may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer becomes Insolvent.
- 9.3 Following expiry or termination of the Contract:
- 9.3.1 Conditions 1, 2, 4, 6, 7, 8, 9.3 and 10 will continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract; and
- 9.3.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 9.4 Lovingtons Ice Cream Ltd will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under Condition 9.1.2, until either the breach is remedied (if applicable) or the Contract terminates, whichever occurs first.
10. GENERAL
- 10.1 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of Lovingtons Ice Cream Ltd, except the right to use, or re-sell the Goods in the Buyer's ordinary course of business. The Buyer will not without the prior consent from Lovington's Ice Cream Ltd allow any trademarks of Lovingtons Ice Cream Ltd or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words. All Intellectual Property Rights in the Goods (including all specifications, recipes and packaging) are and remain the property of Lovingtons Ice Cream Ltd. All Intellectual Property Rights created as part of and arising from the provision of the Goods shall be the property of Lovingtons Ice Cream Ltd.
- 10.2 The Buyer will indemnify, keep indemnified and hold harmless Lovingtons Ice Cream Ltd from and against any costs, expenses, liabilities, losses and damages incurred by Lovingtons Ice Cream Ltd in connection with any claim by any third party that the use by Lovingtons Ice Cream Ltd of any recipes, designs, branding or materials of any kind supplied by the Buyer infringes the Intellectual Property Rights of that third party.
- 10.3 The Buyer will keep all Lovingtons Ice Cream Ltd confidential information (including information relating to the Prices) secret, confidential and at least as safe and secure as it would keep its own confidential information.
- 10.4 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
- 10.5 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 10.6 The Buyer will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.
- 10.7 The parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 10.8 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 10.8.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract;
- 10.8.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
- 10.8.3 nothing in this Condition 10.8 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.
- 10.9 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be (i) delivered to or left at (but not, in either case, by post) that party's address or (ii) sent by pre-paid first-class post or other next working day postal delivery service, at its registered office (if a company) or (in any other case) its principal place of business.
- 10.10 Any notice or communication shall be deemed to have been received (i) if delivered to or left at that party's address at the time the notice or communication is delivered to or left at that party's address, or (ii) otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 10.11 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law. Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).