

Terms and conditions for the purchase of goods by
Dansko Foods Limited

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in Ireland;
Customer	means Dansko Foods Limited, a company incorporated in Ireland under registration number 115579 and having its registered office at Victoria Road, Cork;
Conditions	means the Customer's terms and conditions of purchase set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the sale and purchase of Goods incorporating these Conditions and the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers workforce;
Goods	means the goods and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer;
Location	means the address(es) for delivery of the Goods as set out in the Order;
Order	means the Customer's order for the Goods from the Supplier as set out in the Customer's order form;
Price	has the meaning given in clause 3.1;
Seller	means the person who sells the Goods to the Customer and whose

details are set out in the Order;

Specification means the description, any samples, or specification of the Goods and their packaging set out or referred to in the Order; and

VAT means value added tax under the Value Added Taxes Consolidation Act 2010 or any other similar sale or fiscal tax applying to the sale of the Goods.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;

1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns

1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.5 a reference to a gender includes each other gender;

1.2.6 words in the singular include the plural and vice versa;

1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form and includes email;

1.2.9 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and

1.2.10 a reference to legislation includes all subordinate legislation made from time to time under that legislation.

2 Application of these Conditions

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Supplier's quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Customer otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase Goods subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 2.6 Acceptance of an Order by the Supplier shall take place when it is expressly accepted or by any other conduct of the Supplier which the Customer reasonably considers is consistent with acceptance of the Order.

3 Price

- 3.1 The price for the Goods shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges as advised by the Supplier and received and acknowledged by the Customer before the date the Order is made (**Price**). No increase in the Price may be made after the Order is placed.
- 3.2 The Price includes packaging and delivery.

4 Payment

- 4.1 The Supplier shall invoice the Customer for the Goods no sooner than completion of delivery of the Goods or, if later, the Customer's acceptance of the Goods.
- 4.2 The Customer shall pay each validly submitted invoice of the Supplier within 30 days of receipt.
- 4.3 Time of payment is not of the essence.
- 4.4 VAT shall be charged by the Supplier and paid by the Customer at the then applicable rate.

5 Cancellation

- 5.1 The Customer shall have the right to cancel the Order for the Goods or for any part of the Goods which have not yet been delivered to the Customer.

6 Delivery

- 6.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier only on arrival of the Goods at the Location.
- 6.2 The Goods shall not be delivered by instalments unless otherwise agreed in writing by the Customer.

- 6.3 Each delivery of the Goods shall be accompanied by a delivery note stating:
- 6.3.1 the date of the Order;
 - 6.3.2 the relevant Customer and Supplier details;
 - 6.3.3 the product numbers and type and quantity of Goods in the consignment; and
 - 6.3.4 any special handling and other requests.
- 6.4 Time of delivery is of the essence. If the Supplier fails to deliver any of the Goods by the date specified in the Order, the Customer shall (without prejudice to its other rights and remedies) be entitled at the Customer's sole discretion:
- 6.4.1 to terminate the Contract in whole or in part;
 - 6.4.2 to purchase the same or similar Goods from a supplier other than the Supplier;
 - 6.4.3 to recover from the Supplier all costs and losses resulting to the Customer, including the amount by which the price payable by the Customer to acquire those Goods from another supplier exceeds the price payable under the Contract and any loss of profit; and
 - 6.4.4 all or any of the foregoing.
- 6.5 If the Customer fails to accept delivery of the Goods on the date or within the period set out in the Order, the Supplier shall store and insure the Goods pending delivery.

7 Acceptance, rejection and inspection

- 7.1 The Customer shall not have accepted, or be deemed to have accepted, the Goods until the Acceptance Conditions are fulfilled.
- 7.2 The '**Acceptance Conditions**' are that:
- 7.2.1 the Goods have been delivered to or at the Location; and
 - 7.2.2 the Customer has notified the Supplier in writing that the Goods have been delivered in full compliance with the terms and conditions of the Contract.
- 7.3 The Customer shall be entitled to reject any Goods which are not in full compliance with the terms and conditions of the Contract. Any acceptance of defective, late or incomplete Goods or any payment made in respect thereof, shall not constitute a waiver of any of the Customer's rights and remedies, including its right to reject. If the Goods are rejected due to the volume of the Goods exceeding a 5% margin (above or below), the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume.
- 7.4 Any rejected Goods may be returned to the Supplier by the Customer at the Supplier's cost and risk. The Supplier shall pay to the Customer a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 7.5 The Customer may inspect and test the Goods during manufacture or processing prior to despatch, and the Supplier shall provide the Customer with all facilities reasonably required.

- 7.6 Any inspection or testing of the Goods shall not be deemed to be acceptance of the Goods or a waiver of any of the Customer's rights and remedies, including its right to reject.
- 7.7 The rights of the Customer in this clause 7 are without prejudice to the Customer's rights under clause 9.

8 Title and risk

- 8.1 Risk in the Goods shall pass to the Customer on delivery and when the Customer has accepted the Goods as conforming in every respect with the Contract.
- 8.2 Title to the Goods shall pass to the Customer on the sooner of: (a) payment by the Customer for the Goods; or (b) delivery of the Goods to the Customer.
- 8.3 The passing of title shall not prejudice any other of the Customer's rights and remedies, including its right to reject.
- 8.4 The Supplier and no other person shall have a lien on, right of stoppage in transit or other rights in or to any Goods title to which has vested in the Customer or any specifications or materials of the Customer, and the Supplier shall ensure that relevant third parties accept the exclusion of such lien and rights.
- 8.5 The Supplier warrants and represents that it:
- 8.5.1 has at the time the Contract is made full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver them to the Customer; and
- 8.5.2 shall hold such title and right to enable it to ensure that the Customer shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession of them.

9 Warranty

- 9.1 The Supplier warrants and represents that, for a period of 3 months from delivery (the **Warranty Period**), the Goods shall:
- 9.1.1 conform to any sample, their description and to the Specification;
- 9.1.2 be free from defects in design, material and workmanship;
- 9.1.3 comply with all applicable laws, standards and best industry practice;
- 9.1.4 be of merchantable quality within the meaning of the Sale of Goods Acts 1893 and 1980; and
- 9.1.5 be fit for purpose and any purpose held out by the Supplier and as otherwise required to meet the Customer's needs.
- 9.2 The Supplier agrees that the approval by the Customer of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause 9.
- 9.3 The Supplier warrants and represents that it understands the Customer's business and needs.

- 9.4 The Supplier shall, without prejudice to the Customer's other rights and remedies, repair, replace, correct or refund the price of defective Goods.
- 9.5 The provisions of these Conditions shall apply to any Goods that are repaired, replaced or corrected with effect from delivery of the repaired, replaced or corrected Goods.
- 9.6 The Customer's rights under these Conditions are in addition to, and do not exclude or modify, the rights and conditions contained in ss 13 to 15 of the Sale of Goods Acts 1893 and 1980.
- 9.7 The Customer shall be entitled to exercise its rights under this clause 9 regardless of whether the Goods have been accepted under the Acceptance Conditions and notwithstanding that the Goods were not rejected following their initial inspection under clause 7.3

10 Indemnity and insurance

- 10.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses which the Customer may suffer or incur directly or indirectly from the Supplier's breach of any of the Supplier's obligations under the Contract.
- 10.2 The Supplier shall have in place contracts of insurance with reputable insurers incorporated in the Ireland insuring the Goods and any of the Customer's materials in the Supplier's possession against the usual risks, including accident, fire and theft, for their full replacement value until the risk in them passes to the Customer, and insuring against all other risks that a prudent supplier should consider reasonable. On request, the Supplier shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Supplier shall on request assign to the Customer the benefit of such insurance.

11 Limitation of liability

- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clauses 11.5 and 11.6, the Customer's total liability shall not exceed the amount of the charges payable by the Customer under the Contract;
- 11.3 Subject to clauses 11.5 and 11.6, the Customer shall not be liable for consequential, indirect or special losses.
- 11.4 Subject to clauses 11.5 and 11.6, the Customer shall not be liable for any of the following (whether direct or indirect):
- 11.4.1 loss of profit;
 - 11.4.2 loss of data;
 - 11.4.3 loss of use;
 - 11.4.4 loss of production;
 - 11.4.5 loss of contract;

- 11.4.6 loss of opportunity;
 - 11.4.7 loss of savings, discount or rebate (whether actual or anticipated);
 - 11.4.8 harm to reputation or loss of goodwill.
- 11.5 The limitations of liability set out in clauses 11.2 to 11.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 11.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.6.1 death or personal injury caused by negligence;
 - 11.6.2 fraud or fraudulent misrepresentation;
 - 11.6.3 any other losses which cannot be excluded or limited by applicable law;

12 Confidentiality and announcements

- 12.1 The Supplier shall keep confidential all Confidential Information of the Customer and of any Affiliate of the Customer and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.1.1 any information which was in the public domain at the date of the Contract;
 - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 12.1.3 any information which is independently developed by the Supplier without using information supplied by the Customer or by any Affiliate of the Customer; or
 - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause 12 shall remain in force in perpetuity.
- 12.3 The Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

13 Force Majeure

- 13.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 13.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 13.1.2 uses best endeavours to minimise the effects of that event.
- 13.2 If, due to Force Majeure, a party:
- 13.2.1 is or shall be unable to perform a material obligation; or
 - 13.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days;
- the other party may, within 30 days, terminate the Contract on immediate notice.

14 Termination

- 14.1 The Customer may terminate the Contract or any other contract which it has with the Supplier at any time by giving notice in writing to the Supplier if:
- 14.1.1 the Supplier commits a material breach of the Contract and such breach is not remediable;
 - 14.1.2 the Supplier commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
 - 14.1.3 the Supplier has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Customer has given notification that the payment is overdue; or
 - 14.1.4 any consent, licence or authorisation held by the Supplier is revoked or modified such that the Supplier is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 14.2 The Customer may terminate the Contract at any time by giving notice in writing to the Supplier if the Supplier:
- 14.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 14.2.2 is unable to pay its debts either within the meaning of section 570 of the Companies Act 2014 or if the Supplier reasonably believes that to be the case;
 - 14.2.3 becomes the subject of a compromise or arrangement under Part 9 of the Companies Act 2014;
 - 14.2.4 has a receiver and/or manager appointed over all or any part of its undertaking, assets or income;
 - 14.2.5 has an examiner or interim examiner appointed under Part 10 of the Companies Act 2014;
 - 14.2.6 has a resolution passed for its winding up;
 - 14.2.7 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 14.2.8 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
 - 14.2.9 has a freezing order made against it;
 - 14.2.10 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 14.2.11 is subject to any events or circumstances analogous to those in clauses 14.2.1 to 14.2.10 in any jurisdiction;
 - 14.2.12 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 14.2.1 to 14.2.11 including

giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

- 14.3 The Customer may terminate the Contract any time by giving not less 4 weeks' notice in writing to the Supplier if the Supplier undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 14.4 The right of the Customer to terminate the Contract pursuant to clause 14.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 14.5 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 14, it shall immediately notify the Customer in writing.
- 14.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Customer at any time up to the date of termination.

15 Dispute resolution

- 15.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 15.
- 15.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
 - 15.3.1 Within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
 - 15.3.2 If the dispute has not been resolved within 7 days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.
- 15.4 The specific format for the resolution of the dispute under clause 15.3.1 and, if necessary, clause 15.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 15.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 15.3.2 then the matter may be referred to mediation.
- 15.6 Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 15.3 and 15.5 have been completed.

16 Notices

- 16.1 Any notice given by a party under these Conditions shall:

- 16.1.1 be in writing and in English;
 - 16.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
 - 16.1.3 be sent to the relevant party at the address set out in the Contract
- 16.2 Notices may be given, and are deemed received:
- 16.2.1 by hand: on receipt of a signature at the time of delivery;
 - 16.2.2 by An Post Registered Post: at 9.00 am on the second Business Day after posting;
 - 16.2.3 by An Post Registered Post International: at 9.00 am on the fifth Business Day after posting; and
 - 16.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
 - 16.2.5 by email provided confirmation is sent by An Post as aforesaid: on receipt of a read receipt email from the correct address.
- 16.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 16.1 and shall be effective:
- 16.3.1 on the date specified in the notice as being the date of such change; or
 - 16.3.2 if no date is so specified, 5 Business Days after the notice is deemed to be received.
- 16.4 This clause 16 does not apply to notices given in legal proceedings or arbitration.

17 Cumulative remedies

The rights and remedies provided in the Contract for the Customer only are cumulative and not exclusive of any rights and remedies provided by law.

18 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Supplier's obligations only.

19 Further assurance

The Supplier shall at the request of the Customer, and at the Supplier's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

20 Entire agreement

- 20.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 20.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any

documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

21 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, the Customer.

22 Assignment

22.1 The Supplier may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed.

22.2 Notwithstanding clause 22.1, the Supplier may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Customer prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Supplier acknowledges and agrees that any act or omission of its Affiliate in relation to the Supplier's rights or obligations under the Contract shall be deemed to be an act or omission of the Supplier itself.

23 Set off

23.1 The Customer shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Supplier under the Contract or under any other contract which the Customer has with the Supplier.

23.2 The Supplier shall pay all sums that it owes to the Customer under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

24 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

25 Equitable relief

The Supplier recognises that any breach or threatened breach of the Contract may cause the Customer irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Customer, the Supplier acknowledges and agrees that the Customer is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

26 Severance

26.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

26.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

27 Waiver

27.1 No failure, delay or omission by the Customer in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

27.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Customer shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Customer.

27.3 A waiver of any term, provision, condition or breach of the Contract by the Customer shall only be effective if given in writing and signed by the Customer, and then only in the instance and for the purpose for which it is given.

28 Compliance with law

The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

29 Conflicts within contract

If there is a conflict between the terms contained in the Conditions the schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail. If there is a conflict between the terms contained in the Conditions and the terms of the Order, the terms of the Order shall prevail.

30 Costs and expenses

The Supplier shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

31 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Ireland.

32 Jurisdiction

The parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the

Contract, its subject matter or formation (including non-contractual disputes or claims).