

## General Conditions of Sale (UK Customers)

### **1 GENERAL**

- 1.1 Dunhills (Pontefract) PLC (referred to as "**we**", "**us**", "**our**" or "**HARIBO**" hereinafter) only sells or supplies goods to you (being the customer who has offered to purchase goods from us and referred to as "**you**" or "**your**" hereinafter) on these terms and conditions ("**Terms**"), which shall apply in respect of all offers by you to purchase goods submitted in whatever form (including but not limited to email, fax, telephone, electronic data interchange or purchase order) and accepted by us in accordance with clause 2.
- 1.2 Each sale contract between us is referred to below as "**the contract**" and consists of these Terms together with the terms of any signed customer relationship framework and any other written particulars of your order (e.g., quotation, order confirmation) which we agree in writing forms part of the contract between us. We would like to draw your attention in particular to the provisions relating to limitation of liability and remedies in clause 8.
- 1.3 These Terms apply to the contract to the exclusion of any other terms that you seek to impose or incorporate (in a purchase order or otherwise), or which are implied by law, trade custom, practice, or course of dealing. By offering to purchase goods from us, you waive any right you might otherwise have to rely on any term endorsed upon, delivered with, or contained in any of your documents that is inconsistent with these Terms.
- 1.4 The Terms shall only apply in respect of the sale of goods to customers residing in the United Kingdom.

### **2 ACCEPTANCE**

- 2.1 To the extent we provide you with any quotations for the price of goods, our quotations are without commitment and shall not constitute an offer by us for you to purchase goods. A quotation shall, unless otherwise stated, only be valid for a period of 14 business days from its date of issue.
- 2.2 An order from you (in whatever form, including but not limited to email, fax, telephone, electronic data interchange or purchase order) shall be considered an offer to purchase goods on these Terms.
- 2.3 An order shall be considered accepted, and a contract shall come into existence at the point when we either (whichever is earlier):
- a) accept your offer to purchase goods in writing; or
  - b) perform any action which is consistent with fulfilling the order.

### **3 PRICES**

- 3.1 The price for the goods will be the latest price notified to you by us in writing prior to your offer to purchase goods in accordance with clause 2 or, if you have an account with us, will be set out in the latest price list we have agreed with you in force as at the date of delivery.
- 3.2 Unless we agree otherwise in writing, our prices are for sales within the United Kingdom only and are payable in pounds sterling.
- 3.3 Unless we agree otherwise, prices are exclusive of value added tax and any other taxes, duties, and levies which you will be liable to pay and you will indemnify us for any such taxes, duties and levies incurred by us, our group companies or any other third parties acting on our behalf in relation to the sale of goods to you.

### **4 PAYMENT**

- 4.1 Unless we agree otherwise in writing, our terms of payment are for sales within the United Kingdom only.
- 4.2 We may invoice you for the goods on or at any time after delivery.
- 4.3 You shall pay each invoice in full to a bank account nominated by us in writing within 30 days of the date of the invoice or shipment of goods (whichever is the sooner), unless otherwise agreed in writing.
- 4.4 We may set off any amount owed to us by you, against any amount we owe to you, but otherwise all amounts due under the contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

### **5 PERFORMANCE**

- 5.1 We will deliver the goods once we have (or our nominated delivery partner has) agreed a delivery date and time slot with you in writing or by phone. If you are an existing customer and we have previously agreed a delivery location in writing or by phone, we will deliver the goods to that location (unless you tell us otherwise at the time of submitting your order) and we will otherwise deliver to the delivery location specified on the order. Although we shall use reasonable endeavours (subject to 5.5 below) to deliver at the delivery location

by the quoted delivery date, any delivery dates or times quoted by us or included in the contract are estimates only, are not binding, and the time of delivery is not of the essence. We shall not be liable for any failure or delay in delivery of the goods that is caused due to:

- a) one the events in clause 5.5;
- b) your failure to provide us with access to the agreed delivery location, adequate delivery instructions or any other instructions that are relevant to the supply of the goods; or
- c) your failure to notify us of a change in delivery location at the time of making the order or before delivery.

If we cannot deliver due to issues set out in 5.1(b) or (c) above, you will be responsible for any costs of redelivery.

5.2 Delivery will be completed on the completion of unloading of the goods at the delivery location.

5.3 We shall be free to deliver the goods in instalments and may invoice each separate instalment and each shall be paid for in accordance with these Terms.

5.4 If an incorrect quantity of goods is delivered, this shall be resolved as follows:

- a) if less than the ordered quantity of goods is delivered, you will not be entitled to reject the goods, and at our discretion (taking in to account the timing of your notification to us that there is a shortage) we will either deliver the remainder of the quantity of goods ordered as soon as practicable, or invoice you a pro-rated sum for the amount delivered, or credit you a pro-rated sum for the amount shorted; or
- b) if more than the ordered quantity of goods is delivered, we will invoice you for the excess unless you tell us that the excess is rejected at the time of delivery.

5.5 We may suspend the date of delivery of or cancel the whole or any part of your order without being in breach of the contract or otherwise liable for failure or delay in performance:

- a) if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protest, riot, civil commotion, fire, explosion, flood, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce); or
- b) if our contractors and suppliers are delayed or unable to perform, or if we are unable to obtain supplies of adequate or suitable materials, or are delayed in obtaining such materials, because of incidents mentioned under clause 5.5(a).

## **6 TITLE AND RISK**

6.1 Subject to clause 6.3, title to goods supplied by us remains vested in us until we have received in full all sums due to us in respect of:

- a) the goods supplied; and
- b) all other sums which are, or which become due from you to us on any account.

6.2 Pending title passing, you shall keep such goods separate from all other goods and ensure they remain readily identifiable as our property, in satisfactory condition and insured to their full value by you, and in all respects held by you as bailee for us. We shall be entitled at any time to inspect and/or repossess our goods and you will allow and procure for us at any reasonable time any necessary access to the goods for this purpose.

6.3 If the goods supplied are intended (at any time of your order) for resale by you in the normal course of your trading, you shall be entitled (provided we have not repossessed or given you notice of our intention to repossess the goods) to sell such goods on a disposal in good faith for full value in the normal course of such trading. You shall deal as principal when making such sale and title to the goods shall pass to you immediately before the time at which the resale occurs. In the case of other goods, you shall, while the goods remain our property, not dispose or permit any disposal of them.

6.4 We may maintain an action against you for the purchase price and all other monies owing by you in relation to the goods.

6.5 The risk of any loss, deterioration or damage shall nevertheless be borne by you from completion of delivery.

## **7 WARRANTIES**

7.1 We warrant that, on delivery, the goods will:

- a) be free from material defects in design, material and workmanship and will conform in all material respects with the line item description notified by us from time to time; and
- b) comply with all applicable food and packaging regulations in force in the United Kingdom at the time of entering into the contract.

- 7.2 Any other specifications, formulations, and statements as to content, or otherwise, issued and descriptions and samples given, by us in connection with our goods are produced for the sole purpose of giving an approximate idea of the goods referred to in them and they shall not form part of the contract nor have any contractual force.
- 7.3 Pursuant to our policy of continuous improvements we reserve the right, without notice and without affecting the validity of the contract, to make such changes in materials, dimensions, specification, description, and design as we think reasonable or desirable in all the circumstances (including where required by any applicable statutory or regulatory requirement).
- 7.4 We shall only be liable if the goods fail to comply with clause 7.1 to the extent set out in clause 8.4 below and we will not be liable if the goods fail to comply with clause 7.1 if:
- a) you fail to give notice in accordance with clause 8.2 or if you make any further use of the goods after giving such notice;
  - b) the defect arises because you failed to follow:
    - (i) good trade practice regarding the storage and handling of the goods, including storing the goods out of the sunlight and away from heat and humidity; and/or
    - (ii) our oral or written instructions as to the storage and handling of the goods
  - c) the defect arises as a result of wilful damage, negligence, or abnormal storage or 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 requirements.
- 7.5 You acknowledge that the goods are manufactured and packaged for sale in the United Kingdom only. If you choose to sell the goods outside the United Kingdom, it shall be your sole responsibility to ensure that food, packaging and other applicable laws and regulations of other countries are being complied with and you shall indemnify us for all liabilities, costs, expenses, damages, claims and losses suffered or incurred by us, our group companies or any other third parties acting on our behalf arising out of or in connection with you selling the goods outside the United Kingdom and failing to comply with any such applicable food, packaging and other applicable laws and regulations in the countries in which the goods are sold by you.
- 7.6 You shall maintain appropriate, up-to-date, and accurate records to enable the immediate recall of any goods. If you receive or become aware of a request (whether from us or a governmental or regulatory authority), court order or other directive of a governmental or regulatory authority to withdraw any goods from the market ("**Recall Notice**") or any complaint relating to the goods which indicates that any of the goods supplied by us may be defective, faulty, or unsafe in any way ("**Complaint**") you must:
- a) immediately notify us in writing of a third-party Recall Notice or Complaint and provide copies of the same;
  - b) forward to us for examination representative samples of the goods which are the subject matter of the Recall Notice or Complaint, together with full identification of the goods including the batch and serial number of the goods (or other marking to aid traceability);
  - c) comply with any incident crisis, product recall and other disaster recovery plans and instructions which we have notified to you from time to time and, at our request, use your best endeavours to locate and recall any defective goods;
  - d) allow us to manage any correspondence, notice, communication, or other material in respect of the Recall Notice or Complaint and only send, publish, or distribute any correspondence, notice, communication, or other material in respect of the Recall Notice or Complaint which we have pre-approved in writing; and
  - e) in the event of any dispute with a third party, not admit liability or do anything which might be construed as an admission of liability nor take any proceedings in respect of or compromise such dispute without our prior written consent.
- 7.7 Unless required by law, you may only undertake a recall or withdrawal of the goods from the market with our written permission and in accordance with clause 7.6.

## **8 LIMITATION OF LIABILITIES AND REMEDIES**

- 8.1 Nothing in the contract is to be interpreted as excluding or limiting liability for any matter for which it would be unlawful to exclude or limit liability, including for personal injury or death caused by negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or defective products under the Consumer Protection Act 1987.
- 8.2 Within 3 days from date of delivery of the goods or any part thereof, you shall satisfy yourself that the goods comply with the warranties in clause 7.1 and, if not, shall notify us in writing within those 3 days of any apparent non-conformance.
- 8.3 If no notice is received by us within 3 days from the date of delivery, the goods shall be deemed to have been accepted by you and it shall be conclusive evidence that the goods are correct and free from apparent defects or damage.

- 8.4 After receiving notice pursuant to 8.2 above, we shall be given the opportunity to examine the goods and, if asked by us to do so, you shall return such goods to our place of business at our cost and, at our option, we will either refund or replace the goods, which shall constitute your sole remedy for any non-conformance with the provisions set out in clause 7.1.
- 8.5 Subject to clause 8.1 above, our entire liability (and that of our employees, agents, and contractors), whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall be for no more than the invoice price of the goods under the contract.
- 8.6 Subject to clause 8.1, in no circumstances shall we, our employees, contractors or our agents be liable whether in contract, tort (including negligence), misrepresentation, restitution or otherwise for:
- a) any loss of agreements or contracts;
  - b) any loss of sales or business;
  - c) any loss of profit;
  - d) any loss of or damage to goodwill or reputation;
  - e) any financial penalties;
  - f) any interest charges; or
  - g) any indirect or consequential losses,

incurred by you or a third party, even if such losses were foreseeable and even if they or the risk of them have been specifically drawn to our attention.

- 8.7 Except as set out in the contract and subject to clause 8.1, all warranties, representations, undertakings, terms, and obligations (express or implied) are excluded to the fullest extent permitted by applicable law.
- 8.8 We maintain public and product liability insurance. A copy of the policy is available for inspection, at any time, on request.
- 8.9 This clause 8 shall survive termination of the contract.

## 9 MISCELLANEOUS

- 9.1 **Headings:** These Terms shall be interpreted without reference to their headings.
- 9.2 **Governing Law and Jurisdiction:** The contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it shall be governed by the laws of England and Wales, and both parties submit to the exclusive jurisdiction of the English courts.
- 9.3 **Severability:** Any provision of these conditions held by a court of law to be invalid shall be severable and shall to the extent necessary to prevent such invalidity be deemed to be omitted from these Terms and any liability which would otherwise have been excluded or limited shall nevertheless be subject to the remaining provisions of these Terms.
- 9.4 **Waiver:** Any waiver by us or any breach of, or any default under, any provision of the contract by you, will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the contract.
- 9.5 **Relationship:** Our relationship is as independent contractors only, not as partners or as principal and agent.
- 9.6 **Third party rights:** 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.
- 9.7 **Variation:** Except as set out in these Terms, no variation of the contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 9.8 **Assignment and other dealings:** We may at any time assign our rights under the contract to any other company or person or subcontract any of our obligations under the contract (including in respect of delivery). You shall not assign, novate, or transfer any of your rights or obligations under the contract to any other company or person without our prior written consent.
- 9.9 **Anti-bribery:** Neither party shall engage in any activity, practice, or conduct which would constitute an offence under any anti-bribery and anti-corruption laws, regulations, and codes, including but not limited to the Bribery Act 2010.
- 9.10 **Notices:** Any notice given to a party under or in connection with the contract shall be in writing and shall be:
- a) sent by email to the address notified for such purposes; or
  - b) delivered by hand or by pre-paid first-class post or other next working day delivery service or airmail at its registered office, and such notice shall be deemed received in accordance with clause 9.11.

- 9.11 This clause 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. Any notice shall be deemed to have been received:
- a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - b) 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;
  - c) if sent by airmail, at 9.00 am on the fifth business day after posting or at the time recorded by the delivery service; and
  - d) if sent by 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 9.11(d), business hours mean 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

## 10 ENTIRE AGREEMENT

- 10.1 **You acknowledge and agree that you do not rely on, and shall have no remedy in respect of, any statement or representation, of any person (whether party to the contract or not) other than as expressly set out in the contract.**
- 10.2 Subject to clause 10.1, the contract constitutes the entire agreement and understanding between you and us and supersedes any previous agreement between us.
- 10.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the contract.
- 10.4 Nothing in this clause shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

## 11 PACKAGING AND PALLETS

- 11.1 We wish to inform you of the procedure for CHEP pallets. CHEP is a pallet pooling service. To keep costs low and to avoid being charged for lost or missing pallets it is essential that you cooperate with CHEP by recording, managing, and returning pallets. We use CHEP pallets for all orders. **You do not need to have a CHEP account to operate the system.**
- 11.2 You are required to advise CHEP after receipt of the order, the location of the empty pallets by phoning **0800 515320**. You shall dispose of all packaging in accordance with all applicable laws and regulations.
- 11.3 HARIBO will record and report to CHEP details of the order number, the quantity and type of pallets.
- 11.4 Failure to comply with the correct management of the CHEP pooling system will result in charges being raised for pallets you have received and not reported to CHEP. You will indemnify us for all liabilities, costs, expenses, damages, claims and losses suffered or incurred by us, our group companies or any other third parties acting on our behalf, arising out of or in connection with your failure to record, manage and return pallets as required by CHEP and/or your failure to dispose of all packaging in accordance with all applicable laws and regulations.
- 11.5 The CHEP pooling system and process is FREE to all HARIBO customers who adhere to the process.
- 11.6 CHEP contact number 0800 515320.

## 12 DATA PROTECTION

- 12.1 Please refer to our Customer Privacy Policy (which can be found here: [Customer - Supplier Privacy Policy](#)) for details of how we process any personal data we obtain in connection with customer on-boarding or communications relating to the contract.

## 13 CONFIDENTIALITY

- 13.1 Each party (the "**Receiving Party**") shall treat and keep all confidential information either first disclosed to it by the other party (the "**Disclosing Party**"), or learnt, acquired, or developed by the Receiving Party in connection with the contract, secret and confidential, and will not, without the Disclosing Party's consent, disclose confidential information to any other person other than in accordance with the contract.
- 13.2 The foregoing shall not apply to the extent that:
- a) the Receiving Party needs to have or disclose confidential information of the Disclosing Party to any affiliate, subcontractor, agent, or employee of the Receiving Party in order to fulfil its obligations or exercise its rights under the contract, provided always that the Receiving Party shall procure that such person to whom the information is disclosed keeps the confidential information secret and confidential;
  - b) any confidential information is in the public domain at the time of entering into the contract, or at a later date comes into the public domain, where such confidential information has not come into the public domain through a breach of the contract; or

c) any confidential information is required to be disclosed pursuant to any relevant law or regulatory authority.

13.3 This clause 13 shall survive termination of the contract.

## 14 INTELLECTUAL PROPERTY

14.1 For the purpose of this clause, "IPR" means patents, utility model rights, copyright, trade marks, service marks, trade, business and domain names, database rights, design rights, topography rights, moral rights, goodwill, rights in any Confidential Information (including know-how, business methods, data and trade secrets) and all other similar or analogous rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights in each case in any part of the world.

14.2 Neither party shall acquire any title, rights, or interest in or to the IPR belonging to or licensed to the other party and all IPR belonging to a party or its third-party licensors prior to entering the contract shall remain vested in that party or its third-party licensors (as applicable). For the avoidance of doubt, all IPR in the HARIBO and MAOAM brands (and any other brands we or our group companies may develop or purchase from time to time) ("**Our Brands**") shall remain the IPR of HARIBO or our group companies and you will acquire no title, rights, or interest in or to the same.

14.3 To the extent we agree to provide you with any specifications, documents, data, articles, information, or any other materials (including, without limitation, any marketing tools) relating to HARIBO, any of our group companies or Our Brands ("**HARIBO Materials**"), they remain our property at all times. The HARIBO Materials must be kept confidential and secure, and we shall have the right to enter your premises at any time on reasonable notice to verify compliance with this clause 14. While HARIBO Materials are in your custody you must not use them, copy them, or disseminate them, electronically or otherwise, except in accordance with our instructions. We retain copyright and any other available IPR in any HARIBO Materials.

14.4 At our request, you will promptly return any HARIBO Materials to us in the same conditions as they were supplied to you.

14.5 On expiry or termination of the contract for any reason you will immediately deliver to us all HARIBO Materials together with all of our confidential information.

14.6 If you fail to comply with this clause 14, we shall have the right to enter your premises and take possession of any items that should have been returned.

14.7 This clause 14 shall survive termination of the contract.

## 15 TERMINATION

15.1 Without limiting our other rights or remedies, we may terminate the contract or suspend performance under it with immediate effect by giving written notice to you if:

- a) you commit a material breach of any term of the contract and (if such a breach is remediable) you fail to remedy that breach within 14 days of being notified in writing to do so;
- b) you stop trading or get in a position whereby you cannot pay your debts;
- c) you take any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with your 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 your 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;
- d) you fail to pay any amount due under the contract on the due date for payment; or
- e) you do something, or you are alleged to have done something, which could damage or has damaged our brand, reputation, or goodwill.

15.2 On termination of the contract, you shall immediately pay any sums which remain owed to us.

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

## 16 MINIMUM PURCHASE AGREEMENT

You acknowledge and agree to be bound by any minimum spend commitment we notify to you in respect of the orders placed.