



TIP TOP STANDARD TERMS OF PURCHASE OF GOODS AND SERVICES

1. DEFINITIONS

1.1 In addition to any other terms defined in these terms and conditions, the following terms have the meaning given to them below:

- (a) "you" and "your" means the supplier of the goods or services to us.
- (b) "we", "our" and "us" means Tip Top Ice Cream Company Limited (or any related company thereof).

2. TERMS

2.1 These terms, together with:

- (a) any terms set out in our order to purchase any goods or services ("**Products**") from you ("**Purchase Order**"); and
 - (b) the Froneri Supplier Code found on our website and as amended by us from time to time.
- (together, the "**Terms**") set out the terms and conditions on which we purchase any Products from you ("**Purchase**").

2.2 You agree that any terms or conditions of supply which any invoice or other document provided by you purports to apply to any Purchase will be of no effect and will not replace or vary any of the Terms unless we agree in writing and notwithstanding anything to the contrary in any other documentation.

3. YOUR OBLIGATIONS

3.1 You must supply the Products in accordance with the Terms.

3.2 You warrant that you hold all consents, permits and licences necessary to supply the Products in accordance with the Terms.

3.3 Where any Purchase Order includes provision of training, support and/or maintenance services or you otherwise agree to provide such services, you must promptly and/or at the intervals specified in the relevant Purchase Order or otherwise agreed between us supply those services in accordance with best industry practice.

3.4 While on our sites, you, your employees, representatives and agents must at all times comply with:

- (a) our site rules and site access and security requirements;
- (b) any relevant legislation, regulation, codes or standards (including health and safety laws and food and safety requirements); and
- (c) any other reasonable directions given by us.

4. DELIVERY AND ACCEPTANCE

4.1 Unless otherwise directed:

- (a) you must deliver the Products by the time specified (if any) and at the address specified on the relevant Purchase Order shortlisted by us ("**Delivery**"); and
- (b) any goods supplied to us by you will be sold Delivery Duty Paid (DDP) (Incoterms 2020), unless otherwise specified in the relevant Purchase Order.

4.2 We may specify additional or special requirements for the delivery of goods on the relevant Purchase Order. In such circumstances, you will be deemed to have accepted such requirements ("**Additional Requirements**") and will be obliged to fulfil the Additional Requirements, unless you promptly advise us otherwise and, in any case, within five business days of receipt of the relevant Purchase Order. If you advise us that you are unable to fulfil any Additional Requirements in accordance with this clause 4.2, we may cancel or amend our Purchase Order by notifying you in writing.

4.3 Where the Purchase Order includes any installation by you, you must promptly complete installation in accordance with industry best practice and all laws by the date set out in the Purchase Order or, if no date is provided, at times reasonably approved by us and with minimum disruption.

4.4 You agree that we may inspect, test and observe at all reasonable times any Products (including at any reasonable time prior to Delivery of any such Products). However, you agree that any such inspection, testing and/or observation will not relieve you from any subsequent responsibility or liability in respect of the Products under the Terms or applicable law, and does not, in any way, imply or constitute our acceptance of any of the Products which we have inspected, tested or observed.

4.5 We may, at our sole discretion, carry out any tests which we reasonably consider to be appropriate to confirm whether any Products (or any part thereof) supplied to us by you are of acceptable quality ("**Acceptance Test**"). If any Products fail any Acceptance Test (including due to any defects, damage or non-compliance with any product specifications, service requirements or applicable Additional Requirements, you will at your cost immediately remedy such failure. You agree to assist us with completing any Acceptance Tests under this clause as reasonably requested by us from time to time.

4.6 If you make part deliveries and/or fail to deliver the total quantities as stipulated on the relevant Purchase Order we may elect, at our sole discretion, to cancel the entire order at no cost to us and/or return any part deliveries to you at your cost.

4.7 If you become aware that any government or other authority requires you to recall any or all of the goods supplied by you to us, you must:

- (a) immediately notify us;
- (b) use reasonable endeavours to provide replacement goods to us as soon as possible; and
- (c) reimburse, on demand by us, any reasonable costs we suffer or incur in purchasing substitute Products, and you agree we may recover such costs against you as a debt due to us.

4.8 Where a Purchase Order specifies a time for Delivery of the Products, time is of the essence with respect to that Delivery. Without prejudice to any of our other rights and remedies, you will be liable to pay any storage and/or transportation expenses incurred of suffered by us due to any delay in Delivering any goods or services at the times specified in a Purchase Order or otherwise agreed between you and us in writing (or, if no such time is specified or agreed, within a reasonable period). You agree to indemnify us, and keep us indemnified, against any loss, damage, injury, penalties, costs and expenses arising directly or indirectly from any such delay in such Delivery.

4.9 We may vary the delivery time and/or address at any time prior to Delivery of the relevant Products by providing you written notice of those changes.

5. TITLE AND RISK

5.1 Title to any Products (in the case of goods, including any parts or items supplied by you as part of a service) passes to us on the earlier of:

- (a) payment (including payment of any part of the relevant price) by us prior to Delivery; or
- (b) on Delivery.

5.2 Notwithstanding clause 5.1, risk in the Products (including the risk of any loss, damage or deterioration of or to the Products) remains with you until our acceptance of the Products upon Delivery.

5.3 The receipt or signature of a delivery order by one of our authorised officers does not constitute acceptance of either the quality or quantity of the Products. Our acceptance of any Products will be subject to our inspection in accordance with these Terms.

6. PRICING

6.1 The price for any Products supplied by you is as set out in the Purchase Order (unless otherwise agreed in writing) and no additional fees, costs or expenses will be payable by us in relation to such supply (except as expressly set out in the Terms). Unless otherwise stated in the Purchase Order, the price is in New Zealand dollars and is inclusive of all taxes, including goods and services tax ("GST"), duties, fees or other government levies and charges.

6.2 Where you make a taxable supply (as that term is defined in the Goods and Services Tax Act 1985 ("GST Act")), payment by us will be subject to receipt from you of an invoice that includes taxable supply information (as that term is defined in the GST Act).

6.3 You agree to ensure that all invoices for your supply of Products are received by us by the 15th of the month following Delivery of such Products. The unit of measure detailed on the invoice (including in relation to any quantity of Products supplied) must be the unit of measure detailed in our relevant Purchase Order. The tax invoice must quote the Purchase Order number and be sent to the address specified on the Purchase Order.

6.4 Subject to us receiving any invoice in accordance with clause 6.3, we will pay such invoice on the first working day of the month which is two months following the relevant invoice date.

7. INTELLECTUAL PROPERTY

7.1 Where any licence or other authorisation from any person is required to own, possess, use or resell any Products (in the case of goods or any component thereof), you will, at no additional cost to us, procure that we are granted an irrevocable and unrestricted licence on a non-exclusive and transferable basis to own, possess, use and resell the Products from the relevant person authorised to grant such licence.

7.2 You agree that all proprietary rights in any intellectual property (including any design, data, specifications, know-how or any other form of intellectual property) that is specifically developed by you for us as part of the supply of Products which we Purchase from you will become our property.

7.3 All confidential information and any intellectual property provided by us in connection with any Purchase Order remains at all times our property and shall be used by you solely for the purpose of completing the relevant Purchase Order and for no other purpose, other than where disclosure of such information is required by law or where we give our prior written consent to such disclosure. Any such information must be destroyed or returned to us at any time on request.

8. WARRANTIES

8.1 You warrant to us that:

- (a) each Product (in the case of a service) will be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons and to the best industry standards and be fit for the intended purpose;
- (b) each Product (in the case of a good, including its components) will:
 - (i) be fit for the intended use and purpose;
 - (ii) conform to the specification, design, quality, quantity, configuration, description and samples agreed and approved by us (if any);
 - (iii) be new and unused on Delivery, and if a shelf/calendar life or utilisation life is applicable, at least 95% of such life remains on Delivery;
 - (iv) not be subject to any mortgage, charge, lien, encumbrance or retention of title;
 - (v) be free from any defect (including any latent defect) in design, materials and workmanship and not emit any contaminant or hazardous substance;
 - (vi) to the extent the Product is or comprises a food or food ingredient, be safe for human consumption;
- (c) our ownership, possession, use or resale of any Products will not infringe any proprietary or other intellectual property right or interest of any person and you will procure that any licence or other authorisation from any person necessary in order for us to obtain the full benefit and use of the Products is granted to us;
- (d) all goods supplied and/or services provided will comply with all applicable laws, regulations, codes and standards, and you will, at your cost, hold and maintain in good standing all necessary licences, registrations, permits, authorisations, consents and approvals required by or from any governmental, provincial or local department or agency; and
- (e) you have good title to the Products and title to the Products will pass to us free of all security interests or any other adverse interests which may affect title to the Products.

8.2 These warranties are additional to any other warranties given by you or implied by custom or law, whether statutory or otherwise. You will pass on to us the benefit of any warranty relating to the Products given by any other person such that we may have recourse against those persons either directly or through you.

8.3 Where any claim of breach of warranty (whether express or implied) by you is made by us, then without limiting any of our other rights under the Terms:

- (a) you will promptly remedy each warranty claim to our reasonable satisfaction;
- (b) any applicable warranty period will renew on your completion of remedying the relevant defect; and
- (c) without limitation to any other provision of these terms, if any defect which is a breach of a warranty results in us not receiving the expected performance or value from the relevant Product(s) then you will at your own cost promptly replace the Product(s) (with a full warranty) if requested by us.

9. INDEMNITIES

9.1 You will indemnify and keep indemnified us, and our employees, agents and contractors ("**Our Indemnified Parties**") against all claims, expenses, losses, damages and costs ("**Liabilities**") (including all Liabilities arising as a result of damage to a third party's property or injury to or death of any person, and all legal costs in relation to any Liabilities) sustained or incurred by any of Our Indemnified Parties arising from:

- (a) any breach of these terms by you;
- (b) any negligent or wrongful act or omission by you or any of your employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of your obligations under these terms; or
- (c) any fraud, dishonesty, misrepresentation or wilful default by you.

10. RIGHTS AND LIABILITIES

10.1 If you fail to comply with any obligation in these terms and fail to properly remedy the situation to our satisfaction within 5 working days after we notify you of the breach or failure, or if you are or become insolvent or bankrupt or go into receivership or liquidation or enter into any compromise with your creditors, then we may, without limitation to any other right or remedy under these terms or at law:

- (a) cancel or suspend the Purchase Order or any uncompleted portion thereof;
- (b) set off any amount due to us in accordance with these terms against any amounts which may be due to you; and/or
- (c) recover from you any damage, loss or cost (including full legal costs) suffered or incurred by us (whether direct, indirect, consequential or otherwise).

10.2 Notwithstanding the cancellation of the relevant Purchase Order or any uncompleted portion thereof, clauses 4 (Delivery and Acceptance), 7 (Intellectual Property), 8 (Warranties), 10 (Rights and Liabilities), and 11 (Miscellaneous) of these terms will remain in full force and effect and survive any such cancellation.

- 10.3 Except to the extent required by law, we have no liability whatsoever (including, without limitation, in equity, contract or tort, including negligence) to you or any other person for any loss of profits, income or savings, or for indirect or consequential damage, loss, cost or expense suffered by you or any other person.
- 10.4 Without limiting any other provision in these terms, our liability to you (whether in contract or tort, including negligence) is limited to the price payable in respect of the relevant Purchase Order and we shall not be liable for any loss of profits, income or savings, or for indirect or consequential damage, loss, cost or liability.

11. BUSINESS ETHICS & LEGAL COMPLIANCE

- 11.1 You shall comply with the Froneri Supplier Code of Conduct (as found at tiptop.co.nz/terms-and-conditions), all applicable law, including but not limited to all laws relating to bribery, corruption, modern slavery, tax evasion and financial crime applicable to the your performance of under these Terms. You shall comply with any export control and economic sanctions laws in any part of the UK, EU, USA and any territory from which you conduct your business. You shall have in place and maintain policies and procedures to ensure compliance with this 11.1. You shall procure that your personnel (including all of your employees, agents, contractors, representatives and subcontractors) comply with this clause 11.1 and shall remain directly liable for any breach of this clause 11.1 by those personnel. You shall immediately notify us of any breaches of this 11.1. Any breach of this 11.1 shall be a material breach of these Terms entitling (but not obligating) us to terminate immediately without further liability to you

12 MISCELLANEOUS

- 12.1 These terms may only be amended in writing signed by an authorised representative of each party.
- 12.2 If any amount is payable by you to us we are entitled to set that amount off against any amount payable by us to you.
- 12.3 You may not assign or sub-contract any of your rights and obligations in respect of a purchase order or these Terms. We may assign or sub-contract any of our rights and obligations under these Terms.
- 12.4 Nothing in the Terms shall create or evidence any employment relationship, partnership, joint venture, trust or agency between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of the other party, except as expressly provided for in the Terms.
- 12.5 If any provision of these terms is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Terms without affecting the validity of the remainder of the Terms and shall not affect the enforceability, legality, validity or application of any other provision of the Terms.
- 12.6 Neither party is liable for any failure or delay in performing an obligation to the extent that such delay is due to a cause beyond that party's reasonable control, provided that that party must notify the other party of the cause and likely delay as soon as practicable.
- 12.7 No failure or forbearance by a party to exercise, or delay in exercising, (in whole or in part) any right, power or remedy under, or in connection with, these terms shall operate as a waiver of that right, power or remedy. A waiver of any breach of any provision of the Terms shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.
- 12.8 We may terminate these Terms at any time, without cause, by giving you not less than 30 days' written notice of such termination.
- 12.9 Nothing in these terms creates a security interest in any goods supplied to us in accordance with the Terms.
- 12.10 We and you acknowledge and agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to the supply of goods under any purchase order and the Terms.
- 12.11 These Terms are governed by the laws of New Zealand and you agree to submit to the exclusive jurisdiction of the courts of New Zealand.