



# The BakeRite Company Terms and Conditions of Supply

## 1. DEFINITIONS AND INTERPRETATION

<b>Acknowledgement of Delivery</b>	the form provided by the BakeRite Company (or its appointed carrier) to the Customer prior to Delivery of the Goods at the Delivery Location and which the Customer has to sign before Delivery can be completed;
<b>BakeRite Company</b>	<b>THE TRADELINK INTERNATIONAL GROUP LIMITED t/a The BakeRite Company</b> , a company registered in England with registered company number 06629663 and whose registered address is at Belmont House, Shrewsbury Business Park, Shrewsbury, Shropshire SY2 6LG;
<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Conditions</b>	these terms and conditions set out in this document (as amended from time to time in accordance with clause 16.3);
<b>Contract</b>	the contract between the BakeRite Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
<b>Customer</b>	the person or firm who purchases the Goods from the BakeRite Company;
<b>Delivery</b>	means the delivery of the Goods as set out in clause 4.3;
<b>Delivery Location</b>	has the meaning given to it in clause 4.2;
<b>EXW</b>	means "Ex Works" as defined in the Incoterms;
<b>Force Majeure Event</b>	events, circumstances or causes beyond a party's reasonable control;
<b>Good</b>	the goods (or any part of them), as set out in the Order;
<b>Incoterms</b>	means the Incoterms 2020 as they may be updated from time to time;
<b>Order</b>	the Customer's order for the Goods as set out in the Customer's purchase order form;
<b>Order Acknowledgement</b>	the BakeRite Company's written acceptance of the Customer's Order;
<b>Product Code</b>	a unique identifying reference number assigned by the BakeRite Company to the Goods;
<b>Product Proposal</b>	a quotation by the BakeRite Company for the supply of goods;
<b>Specification</b>	the specification for the Goods, including any related special requirements that are agreed in writing by the Customer and the BakeRite Company;
<b>VAT</b>	means value added tax or any equivalent or replacement sales tax from time to time in the UK or elsewhere.

- 1.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 A reference to **writing** or **written** includes emails and faxes.
- 1.4 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

## 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice

or course of dealing.

- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the BakeRite Company an Order Acknowledgement at which point the Contract shall come into existence.
- 2.4 Any samples or descriptive matter produced by the BakeRite Company and any are produced for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Contract nor have any contractual force.
- 2.5 Any Product Proposal issued by the BakeRite Company shall not constitute an offer A Product Proposal shall only be valid for a period of 5 Business Days from its date of issue, or as otherwise specified in the relevant Product Proposal.

## 3. THE GOODS

- 3.1 The description of the Goods, Product Code(s) and quantities to be supplied by the BakeRite Company to the Customer is set out in the Product Proposal and confirmed by the Customer in the Order.
- 3.2 Any samples, descriptive matter, or advertising produced by the BakeRite Company and any illustrations contained in the BakeRite Company's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.3 This is not a sale by sample.
- 3.4 If and to the extent that the Goods are to be supplied in accordance with a Specification supplied by the Customer, the Customer shall indemnify the BakeRite Company, and covenant to pay to the BakeRite Company an amount equal to:
- 3.4.1 all losses (including but not limited to all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the BakeRite Company does or will incur or suffer; and
- 3.4.2 all claims or proceedings made or brought or threatened against the BakeRite Company by any person and all losses, liabilities or costs (on a full indemnity basis), damages and expenses the BakeRite Company does or will incur or suffer as a result of defending or settling any such actual or threatened claims or proceedings, in each case arising out of or in connection with the BakeRite Company's use of the Specification.
- 3.5 The BakeRite Company shall not be under any obligation to mitigate, or procure the mitigation or, any of the losses, liabilities, costs, damages and expenses to which the indemnity in clause 3.4 applies.
- 3.6 Where the Goods supplied are to be "free from" (e.g., gluten free) the BakeRite Company shall, to the extent it is reasonably able to do so, pass on any guarantee it receives from its supplier in respect of the Goods supplied under this Contract.
- 3.7 The Customer acknowledges and agrees that the BakeRite Company does not undertake any checks in respect of the Goods supplied where these are delivered direct to the Customer by BakeRite Company's suppliers and that the BakeRite Company shall have no liability to the Customer where Goods so supplied do not conform to the Specification.
- 3.8 Clause 3.4 shall survive termination of the Contract.

## 4. DELIVERY

- 4.1 The BakeRite Company shall use its reasonable endeavours to ensure that:
- 4.1.1 each delivery of Goods is accompanied by a delivery note which shows the contract number, order number, the type and quantity of Goods, the Product Code(s), special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.1.2 if the BakeRite Company requires the Customer to return any packaging materials to the BakeRite Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the BakeRite Company shall reasonably request. Returns of packaging materials shall be at the BakeRite Company's expense.



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- 4.2 The BakeRite Company shall deliver the Goods to the location set out the Order Acknowledgement or such other location as the parties may agree in writing (**Delivery Location**).
- 4.3 Delivery shall take place in accordance with the relevant Incoterm as set out in the Order Acknowledgement (except for where no Incoterm is stated in the Order Acknowledgement, in which case Delivery shall be on an EXW basis).
- 4.4 Delivery is completed in accordance with the relevant Incoterm as set out in the Order Acknowledgement (except for where no Incoterm is stated in the Order Acknowledgement, in which case Delivery shall be completed on an EXW basis).
- 4.5 All dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The BakeRite Company shall not be liable for any delay in the delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the BakeRite Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the BakeRite Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The BakeRite Company shall have no liability for any failure to deliver Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the BakeRite Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If either:
- 4.7.1 the Customer fails to accept delivery of the Goods on the day the BakeRite Company attempts to make delivery (including refusing to sign the Acknowledgement of Delivery); or
- 4.7.2 the Customer fails to collect the Goods within 3 Business Days of being notified that the Goods are ready for collection, the BakeRite Company, acting in its absolute discretion:
- 4.7.3 may store the Goods until Delivery takes place and charge the Customer for all related costs and expenses (including insurance and additional carriage costs); or
- 4.7.4 resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.
- 4.8 If the BakeRite Company delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.9 The BakeRite Company may deliver Orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.
- 5. QUALITY AND FITNESS FOR PURPOSE**
- 5.1 The BakeRite Company warrants that on the date of delivery and for a period of five Business Days thereafter, the Goods shall:
- 5.1.1 conform in all material respect with their description and the Specification;
- 5.1.2 be free from material defects whilst making allowance for variations in composition and quality associated with a natural product; and
- 5.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 5.2 Subject to Clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to the BakeRite Company within five Business Days from Delivery that some or all of the Goods do not comply with the warranties set out in Clause 5.1.
- 5.2.2 the BakeRite Company is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer, if asked to do so by the BakeRite Company, returns such Goods to the BakeRite Company's place of business at the Customer's cost, the BakeRite Company shall, at its discretion, replace any Goods that are found to be defective, or refund the price of such defective Goods in full.
- 5.3 The BakeRite Company shall not be liable for Goods' failure to comply with the warranties set out in Clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving notice of defects in accordance with Clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow the BakeRite Company's oral or written instructions as to the storage and use of the Goods or good trade practice regarding the same;
- 5.3.3 the defect arises as a result of the BakeRite Company following any Specification supplied by the Customer;
- 5.3.4 the defect arises as a result of wilful damage, negligence, or abnormal storage; or
- 5.3.5 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 The BakeRite Company's only liability to the Customer if the Goods fail to comply with the warranties set out in Clause 5.1 is as set out in this clause 5.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 The terms of the Contract shall apply to any replacement Goods supplied by the BakeRite Company.
- 6. TITLE AND RISK**
- 6.1 Risk in the Goods shall pass to the Customer in accordance with the relevant Incoterm as set out in the Order Acknowledgement (except for where no Incoterm is stated in the Order Acknowledgement, in which case title shall pass on an EXW basis).
- 6.2 Title to Goods shall only pass to the Customer once the BakeRite Company receives payment in full for them.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the BakeRite Company's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
- 6.3.4 notify the BakeRite Company immediately if it becomes subject to any of the events listed in clause 10.1.2 or clause 10.1.3; and
- 6.3.5 give the BakeRite Company such information relating to the Goods as the BakeRite Company may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1.2 or clause 10.1.3, then, without limiting any other right or remedy the BakeRite Company may have the BakeRite Company may at any time:
- 6.4.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- 6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. PRODUCT RECALL**
- 7.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall immediately notify the BakeRite Company in writing enclosing a copy of the Recall Notice.
- 7.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the BakeRite Company and only then in strict compliance with the BakeRite Company's instructions as to the process of implementing the withdrawal.



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### 8. PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price as set out in the Order Acknowledgement, or, if no price is quoted, the price set out in the BakeRite Company's published price list in force as at the date of Delivery.
- 8.2 The BakeRite Company may, by giving notice to the Customer at any time before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 8.2.1 any factor beyond the BakeRite Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the BakeRite Company adequate or accurate information or instructions.
- 8.3 Subject to the applicable Incoterm and unless otherwise agreed in writing between the parties, the price includes the cost of:
- 8.3.1 carriage;
- 8.3.2 packaging; and
- 8.3.3 insurance (up to the point of completion of Delivery only).
- 8.4 The price excludes:
- 8.4.1 amounts in respect of VAT, which the Customer shall additionally be liable to pay to the BakeRite Company at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice; and
- 8.4.2 any applicable import duties, taxes, levies or other charges which shall be payable (unless otherwise agreed in writing) in accordance with the relevant Incoterm.
- 8.5 The BakeRite Company may invoice the Customer for the price of Goods plus VAT at any time following its acceptance of the Customer's Order.
- 8.6 The Customer shall pay invoices in full in cleared funds within 20 Business Days of the invoice date. Payment shall be made to the bank account nominated in writing by the BakeRite Company.
- 8.7 If the Customer fails to make any payment due to the BakeRite Company under the Contract by the due date for payment, then, without limiting the BakeRite Company's remedies under Clause 10:
- 8.7.1 the Customer shall pay interest on the overdue amount at the rate of 5% per annum above Barclay Bank's PLC base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and the Customer shall pay the interest together with the overdue amount; and
- 8.7.2 the BakeRite Company may suspend all further deliveries of Goods until payment has been made in full.
- 8.8 The Customer shall pay all amounts due under the Contract in full without set-off, counterclaim, deduction or withholding, except for any deduction or withholding required by law. The BakeRite Company may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the BakeRite Company to the Customer.

### 9. LIMITATION OF LIABILITY

- 9.1 Nothing in this Contract shall limit or exclude either party's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 the Customer's indemnity at clause 3.4;
- 9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 9.1.5 any matter in respect of which it would be unlawful for the BakeRite Company to exclude or restrict liability.
- 9.2 Subject to Clause 9.1 neither party shall be liable to the other, whether in contract, tort

(including negligence), breach of statutory duty, or otherwise, for:

- 9.2.1 loss of profit;
- 9.2.2 loss of sales or business;
- 9.2.3 loss of agreements or contracts;
- 9.2.4 loss of anticipated savings;
- 9.2.5 loss of or damage to goodwill;
- 9.2.6 indirect or consequential loss.
- 9.3 Subject to clause 9.1 and 9.2, the BakeRite Company's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall, in respect of all claims arising from a single cause be limited to £100,000.

### 10. TERMINATION

- 10.1 Without limiting its other rights or remedies, the BakeRite Company may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
- 10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.1.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the Customer's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, the BakeRite Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment.
- 10.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 10.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### 11. FORCE MAJEURE

- 11.1 The BakeRite Company will not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for two months, the BakeRite Company may terminate this Contract immediately on written notice to the Customer.

### 12. CONFIDENTIALITY

- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or BakeRite Company's of the other party or of any member of the group to which the other party belongs, except as permitted by Clause 12.2. For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- 12.2 Each party may disclose the other party's confidential information:
- 12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its



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obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information materially comply with this Clause 12; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

### 13. FURTHER ASSURANCE

13.1 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

### 14. ENTIRE AGREEMENT

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

14.2 Each party acknowledges that in entering into this Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

14.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.4 Nothing in this Contract shall limit or exclude any liability for fraud.

### 15. NOTICES

15.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail.

15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 15.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

15.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 16. GENERAL

16.1 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the BakeRite Company.

16.2 The BakeRite Company may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

16.3 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.4 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.7 No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

### 17. DISPUTE RESOLUTION

17.1 If any dispute arises in connection with this Contract, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 10 Business Days of notice of the dispute, the mediator will be nominated by CEDR.

### 18. GOVERNING LAW AND JURISDICTION

18.1 This Contract, and any dispute or claim, including non-contractual disputes or claims, arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

18.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim, including non-contractual disputes or claims, arising out of or in connection with this Contract or its subject matter or formation.