

**FONTERRA AUSTRALIA GROUP (NON-LBP)
TERMS AND CONDITIONS OF SALE WITHIN AUSTRALIA**

1. DEFINITIONS

1.1 In this document, comprising terms and conditions of sale (**Terms**):

we, our or us means the Fonterra Company(ies) from whom you receive Products and/or Services and its officers, employees, agents, contractors and advisers;

you or your means the purchaser or intending purchaser of the Products or Services from us and includes any agent, contractor or representative of you (including your storage service provider or anyone who processes or on-sells or on-provides goods or services incorporating the Products);

Agreed Basis means at our nominated point of collection or delivery within Australia, as appropriate, and assumes that you take Delivery of the volume of Product referred to in your order, with you being liable for and responsible to pay all taxes (including any sales, value added or like impositions), levies, duties or fees in respect of each Delivery, provided that GST will be payable as provided in these Terms. In no circumstances do we Deliver on a consignment or similar basis;

Deliver means:

(a) to deliver Products other than Liquid Bulk Products (as evidenced by Products being available to be unloaded from transport at our intended destination where we are responsible to arrange delivery or available for loading onto transport at our nominated despatch point where you are responsible to arrange for collection, in either case as we notify you on acceptance of your relevant order); or

(b) to have completed the supply or performance of Services (as reasonably determined by us), as appropriate, on the Agreed Basis;

Fonterra Company means Fonterra Ingredients Australia Pty Ltd ABN 95 003 502 583 or Fonterra Milk Australia Pty Ltd ABN 12 114 326 448 or Fonterra Brands (Australia) Pty Ltd ABN 80 095 181 669 or Fonterra Brands Australia (P&B) Pty Ltd ABN 47 008 668 602 or Murrumbidgee Dairy Product Pty Ltd ABN 87 003 114 930 or Fonterra Australia Pty Ltd ABN 52 006 483 665 or Fonterra Investments Pty Ltd (trading as Fonterra Innovation) ABN 25 113 065 704;

GST, supply, tax invoice and taxable supply have the same meaning as in *A New Tax System (Goods and Services) Act 1999* (Cth) and **Sales Tax** means any tax or levy of a sales, value added or goods and service nature applicable to the sale and/or supply of any Product or Service from time to time under the law applicable to these Terms and includes stamp duty on these Terms or any transaction contemplated by them;

law means, other than in clauses 7 or 9, any law, by-law, legislation, rule, standard, regulation, registration, code or relevant good industry practice applicable to goods and services equivalent to, or incorporating, the Products and/or Services;

Liquid Bulk Products means any liquid goods or products supplied by us in bulk containers or transport vessels;

Products means any goods or products supplied by us to you (in accordance with our specification for such goods or products at the time of its manufacture or processing) in response to your order and includes Liquid Bulk Products; and

Services means any services supplied or deemed to be supplied by us incidental to the Products.

1.2 These Terms apply to the provision or supply of all Products and/or Services by us to you under any order made by you and accepted by us. They supersede and exclude all prior or subsequent discussions, representations, terms and/or conditions of trade, all prior written or oral agreements and understandings between us and you and any other terms and conditions which you seek to extend to the supply of Products and/or Services by us to you, whether by way of incorporation into your order or otherwise.

1.3 We can amend these Terms at any time by notice to you and the amended terms apply in respect of all orders placed by you after you receive that notice. We can also terminate any and all rights (whether express or implied) that you may have or believe that you have to place further orders under these Terms without cause on five days notice to you or such lesser period as these Terms otherwise provide.

1.4 If there is a written agreement between you and us that expressly refers to, or incorporates, these Terms (including a supply agreement or credit terms), and there is any express inconsistency between that agreement and these Terms, the terms of that agreement apply to the extent of that inconsistency.

1.5 If any related body corporate, affiliate or associate of us, either within or outside Australia, is involved in the sale and/or Delivery of Products and/or Services to you, their acts are deemed to be ours and they benefit from these Terms as though they are us (and we hold these Terms on trust for their benefit). We are not obliged to tell you about any involvement by them. We also hold these Terms on trust for our employees, agents, contractors and advisers.

1.6 If we supply goods or products and/or perform services (not being Products or Services) to you or for your benefit and no written agreement or terms and conditions apply expressly to that, then the goods are deemed to be Products and the services are deemed to be Services and all are bound by these Terms.

1.7 If we Deliver Liquid Bulk Products to you, additional terms and conditions apply which are available on our website at www.fonterra.com.au/contractterms and are incorporated by reference into these Terms in respect of such Liquid Bulk Products.

2. QUOTATIONS, DESCRIPTIONS AND PURCHASE ORDERS

2.1 No quotation given by us constitutes an agreement to supply or provide (or to Deliver) the Products or Services referred to therein. We can amend or withdraw quotations at any time. All quotations are subject to these Terms. If you wish to purchase Products and/or Services referred to in a quotation, you must make an order within the specific period stated in the quotation. If the quotation is given without specifying a period within which you are to make an order, then the quotation lapses 48 hours after we send the quotation without the need for us to inform you of that.

2.2 All descriptive specifications, illustrations, data, and dimensions furnished by us or otherwise contained in catalogues or other advertising material are approximate only and are intended to be merely a general description of the Products and are not incorporated within any agreement with you under these Terms and do not form part of the description of the Products sold or Services provided under this or any other agreement with you unless otherwise agreed to in writing by us.

2.3 We may from time to time provide advice, recommendations and statements with respect to the Products and/or Services. However, we do not warrant or guarantee the accuracy or completeness of that advice, those recommendations or statements or the results obtained through the use of the Products or application of the Services. We expressly disclaim any liability for any damage to you from reliance on such advice, recommendations or statements. Such advice, recommendations and statements are relied on by you at your own risk and you should make other appropriate enquiries having regard to your circumstances.

2.4 Any sample, description or visual representation or details of a good or product provided by us to you (including with a quotation or through any catalogue we issue) are representative only and the actual Product Delivered may differ in appearance or dimensions provided such are not materially adverse to you, as reasonably determined by us.

2.5 Your orders must be in writing with a full description of your requests for the Products or Services (or both), the requested date and requested location of Delivery and must set out a unique order number that is acceptable to us. Where there is no nomination of a location of Delivery the Agreed Basis will apply in response to your order. Where there is no requested date or period for Delivery then we will Deliver within three months of the date we accepted your order.

2.6 Each order by you is an offer to purchase Products and/or Services from us subject to these Terms. No order is binding on us unless and until we accept that order in writing. We need not accept any order. These Terms are not an express or implied offer by us to supply any good or service to you.

2.7 Once received by us, your order cannot be cancelled without our written consent (even if we haven't accepted the order yet), and we may charge an administration fee or impose other obligations on you as a condition of giving our consent.

2.8 We may accept your order in whole or in part and will advise where and when we intend that Delivery occur (in each case having regard to any requests set out in your order) and the applicable price. Our acceptance is based solely on the volumes you order (including volume based discounts).

3. DELIVERY

3.1 We will make all reasonable efforts to Deliver all Products or Services to you as advised under clause 2.6 and in one load (or the minimum number of loads required to fulfil that Delivery). Dates or periods specified for Delivery shall not be of the essence. If Delivery as advised under clause 2.6 becomes commercially impractical for us (in our reasonable opinion) then we may Deliver the Products to a commercially reasonable substitute Delivery location selected by us and notified to you. We will not be liable for any loss or damage (including not being liable for consequential, special, punitive, incidental, indirect or economic loss or damage or loss of profits or opportunity) arising or resulting (directly or indirectly) from:

(a) a delay in Delivery where such delay is within our control and does not exceed 10 days or such other period as we expressly agree in writing with you;

(b) part or multiple Deliveries; or

(c) delay in, or failure to, Deliver due to circumstances beyond our control.

3.2 If you are unable to accept Delivery as and where scheduled or arranged by us for any reason (including where you decline to accept all or any part of the Delivery or delay in doing so), we have complete discretion to resell or resupply the Products and/or Services to a third party and you will be liable for any loss incurred by us on that resale or resupply, as well as all storage, Delivery and other logistics costs and any other costs incurred by us in doing so. For the avoidance of doubt, if any of the Products perish, become damaged or tainted, or are otherwise unsaleable (**Damaged**) as a direct or indirect result of you being unable to accept Delivery, you indemnify us for all costs and expenses incurred by us in connection with the Damaged Products (including arranging for transport and/or disposal).

3.3 You must check all Delivery volumes against the delivery documentation and:

(a) where credit terms apply, if you do not dispute it within two days, we are entitled to rely on that documentation in issuing any subsequent tax invoice; and

(b) where 'cash on delivery' applies, you are deemed to accept that volume is correct.

3.4 You must also inspect all Products Delivered and advise us within two days of any claimed defects in them or their packaging or storage or other dispute.

3.5 If you do not notify us of any dispute or defect within the relevant period set out in clauses 3.3 and 3.4, as appropriate, those Products are deemed to have been Delivered by us and accepted by you in compliance with these Terms.

3.6 Unless otherwise directed by us in writing, any pallet, drum, container, bin or crate or other receptacle (**Receptacle**) used by us to facilitate Delivery is not sold to you and does not become your property and must either be returned to us at your cost or, if lost, damaged or not returned within seven days, replaced by you. If not, you indemnify us for all of our resulting costs including charges or compensation we are required to pay to a third party in respect of the use, hire or replacement of the Receptacle. You must keep all Receptacles secure and in good condition in a manner consistent with food and health requirements relevant to the Products until the Receptacles are returned, to, or collected (at your cost) by or on behalf of, us.

4. RISK AND TITLE

4.1 Unless otherwise agreed by us in writing, risk in all Products and Services passes to you on Delivery even though title may not. You are solely responsible for the storage, insurance and application or on-sale of Products at and after Delivery.

4.2 Title in all Products remains with us until such time as full payment is made in clear funds for all amounts owing by you to us for all Products

and Services Delivered by us from time to time. We may insure Products up to the time of Delivery or the passing of title to you, but you must not assume that we will take out any such insurance.

4.3 You acknowledge that until full payment for all Products and Services Delivered (together with any interest under these Terms) is made, you:

(a) hold all Products as our bailee and you further acknowledge that a fiduciary relationship exists between us and you for this purpose;

(b) must keep the Products stored separately from all other goods and keep the Products insured for replacement cost and identified (in a way that is obvious to others) as our property; and

(c) must not pledge or in any way charge or encumber the Products by way of security for the indebtedness of you or any other person.

You must hold any such insurance proceeds on trust for us.

4.4 Until such time as title in the Products passes to you, we are entitled to require you at any time to deliver up the Products to us (or as we direct) and if you fail to immediately do so, we may enter any premises under the control of you or your agent where the Products are stored and repossess them. You must at all times ensure that all third party storage premises used to store your Products also allow us to do this, even if they are not your agent.

4.5 Clauses 4.3 and 4.4 do not apply to the extent that you incorporate Products into other goods or services that are sold or on-sell the Products in an arm's length transaction (during the ordinary course of your business) to a bona fide third party that is not in any way related to, or subject to similar control to, you and, if sold, are sold for market value. However, any proceeds from, or asset comprising an amount payable to you by, that third party in respect of that sale or on-sale are held by you as a fiduciary and on trust for us to the extent their value does not exceed the amount you owe us under these Terms.

5. PRICE AND TAXES

5.1 Without limiting clause 3.1, unless we have agreed in writing with you a fixed price or fee (or basis for determining such) before or when we accept your order (if we do so), our list prices and fees (at the time of Delivery) apply and all such prices and fees chargeable by us are subject to alteration without notice prior to, or after, we accept your order (unless we state otherwise in our acceptance) or where Delivery is delayed by you. All sales and supplies are on the Agreed Basis and subject to clause 4.

5.2 Unless otherwise specified by us, any reference to an amount payable or consideration to be provided in respect of a Delivery to be made by us that is governed by or otherwise connected with these Terms is a reference to that amount or consideration excluding applicable GST.

5.3 The amount to be paid or other consideration to be provided to us for any taxable supply we make that is governed by or otherwise connected with these Terms must be increased by an amount equal to any GST that we are or will become liable to pay in respect of that supply so that we retain after payment of GST the amount which we would have been entitled to receive but for our obligations to pay GST.

5.4 If you or we are required (in connection with these Terms) to pay the other by way of a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that other, then the payment must be reduced by the amount of any input tax credit to which that other is entitled for that loss, cost or expense.

5.5 If a Sales Tax other than GST applies in respect of any Delivery, you are liable for it and must pay it provided that if the law requires that we pay it then the same principles as are set out in clauses 5.2 to 5.4 will apply in respect of it so that in effect you bear the burden of it.

6. INVOICING, PAYMENT AND DEFAULT

6.1 Clause 6 does not apply to you to the extent we have extended credit to you and those terms of credit are in writing and set out the basis for payment (in which case payment of our invoices must be made in accordance with the terms of that credit, whilst it continues to be available to you).

6.2 We will provide a tax invoice for the relevant price and fees applicable to each Delivery prior to, at or after the time of that Delivery, which must accord with Delivery documentation as set out in clause 3.3.

6.3 Payment of all tax invoices must be made on receipt in full without deduction, set-off or counterclaim. You must give us written notice within 14 days of receiving our tax invoice if you believe that the invoice is not correct. Your notice must include full details of the error(s) claimed by you. If an invoice is disputed and that dispute cannot be immediately resolved, we can withhold or defer any future Delivery pending resolution or part-Delivery having regard to the undisputed component. You must make payment of the undisputed amount due on any disputed invoice on the due date. Once the dispute is resolved, you must pay to us within three working days the resolved amount due.

6.4 If:

(a) you default in any payment due to us (including under these Terms) or we conclude that you are likely to, including where you are unable, or state that you are unable, to pay your debts as and when they fall due or where a receiver, receiver and manager, controller, trustee or other insolvency administrator is appointed, or a scheme of arrangement is proposed or approved in respect of you or a mortgagee enters into possession of any of your assets or any similar situation occurs; or

(b) you are otherwise in breach of these Terms, the terms and conditions of any credit we extend to you (including where you exceed your credit limit with us) or any other agreement between you and us,

then:

(c) we may, at our option:

(i) withhold the relevant Delivery together with any further proposed deliveries or cancel any accepted order without notice to you and without prejudice to any other action or remedy which we have or might otherwise have had;

(ii) reclaim the Products in your possession or under your control and may enter premises where we believe that products are stored or held to do so, and recover from you all costs of doing so; and/or

(iii) by notice to you, with immediate effect, terminate any and all rights (whether express or implied) that you may have or believe that you have to place further orders under these Terms; and

(d) all monies owing and outstanding by you to us on any account whatsoever become immediately due and payable (without the requirement for notice from us) and you must pay for any subsequent Deliveries at Delivery.

We will not be liable to you for any losses you incur as the result of our exercising any of our rights under this clause.

6.5 If we believe that we have rights under clause 6.4, you must promptly and reasonably respond to any enquiry from us to clarify this.

6.6 Without in any way limiting our right to require payment in full on the due date, we may charge interest on overdue accounts at the rate that is 2.0% per annum above the rate charged by the Commonwealth Bank of Australia from time to time on overdrafts of less than \$100,000.00. Interest will accrue daily and compound monthly from the due date until payment has been received by us in cleared funds. Payments by you will be applied first to interest accrued and then to the overdue amount.

6.7 Without limiting clause 6.4(c)(ii), any collection charges, legal expenses (calculated on a full indemnity basis) and commissions or any other expenses incurred by us in attempting to recover from you any payment due to us is payable by you to us on demand by us.

6.8 If you owe us money for any reason and we owe you money in connection with these Terms, we may set off the amount you owe us against the amount that we owe you and pay you the resulting net amount.

7. OUR WARRANTIES AND LIMITATION OF OUR LIABILITY

7.1 Notwithstanding any provision to the contrary in these Terms, these Terms do not exclude or limit the application of any statute (including the Trade Practices Act 1974 or equivalent or similar legislation) where to do so would:

(a) contravene that legislation; or

(b) cause any part of clause 7 to be void.

7.2 We:

(a) make no representations or warranties concerning fitness for purpose or appropriateness for your needs of any Delivery, and you must assure yourself of these matters having regard to your circumstances;

(b) exclude all conditions and warranties implied into these Terms or any of your orders; and

(c) are not and will not be liable for any claim by you for breach of warranty unless notice is given in writing to us within two days of Delivery of the relevant Products and/or Services or within any other period prescribed in these Terms.

7.3 To the extent that the Products or Services are not of a kind ordinarily acquired for personal, domestic or household use, our liability for breach of any express provision of these Terms or any law that is preserved by clause 7.1 (other than an implied warranty of title) is limited, at our option, to any combination of the following selected by us:

(a) refunding the price of the Products or Services (or offering credit where payment has not then been made); or

(b) replacing or reworking Products or reperforming Services, or paying for someone else to do so.

7.4 You acknowledge and agree that the burden of proof in respect of alleged defects in Products or Services (or their Delivery) rests with you.

7.5 You must bear all costs of all recalls or withdrawals from sale of Products for any reason (including if we Deliver a defective Product and/or Service). You and us must co-operate in respect of the initiation and conduct of any recall with the objective being to optimise your and our reputation and goodwill whilst ensuring public health and safety is maintained at all times.

7.6 You undertake to promptly inform us if you believe that any Product is defective due to conduct for which we are responsible and in doing so must set out as much information as you have concerning the basis for your belief. You must keep the relevant Products stored separately from all others and in the state or condition in which they were Delivered to you until we have an opportunity to inspect them. You must provide all assistance that we reasonably request to determine whether your belief is correct and, if we accept that we are responsible for defective Products (including Services) then you must destroy the Products or deliver them up to (or as directed by) us on our request. Clause 7.3 then applies in respect of the Products.

7.7 You agree that we are not liable for any defect or damage to Products:

(a) unless you advise us of such within the time periods provided in these Terms, including in your notice full details of the Products, the alleged defect and all documents associated with your order and Delivery;

(b) despite clause 7.7(a), if you settle or compromise a claim by a third party concerning such without our involvement and prior written consent;

(c) despite clause 7.7(a), whilst in transit with a third party (whether or not a common carrier) even if we arranged for that third party to transport the Products and Delivery has not occurred; or

(d) if you do not reasonably assist us with our enquiries concerning your claim.

7.8 In no circumstance will we be liable to you or any other person for any loss or damage to person or property, or for consequential, special, punitive, incidental, indirect or economic loss or damage or loss of profits or opportunity arising out of us Delivering Products and/or Services or otherwise providing or supply any goods or services in connection with these Terms on any account whatsoever, and whether by way of damages or indemnity or in respect of breach of contract, tort (including negligence) or defect in manufacture/processing, design or information.

8. INDEMNITY

8.1 You indemnify us and must keep us indemnified against all claims, suits, actions, demands, loss (including consequential, special, punitive, indirect or economic loss or damage or loss of profits or opportunity), liability, costs, expenses (including legal expenses on a full indemnity basis), judgments and awards made against us or incurred by us to the extent that such is caused (directly or indirectly) by a breach of these Terms or your order, or any negligent act or omission or breach of any law applicable to the handling, storage, use or sale of the Products (including as incorporated into another good or service), by you or any of your officers, employees, agents or contractors.

8.2 The indemnity in clause 8.1 is a continuing indemnity and is in addition to any statutory rights or remedies we may have or exercise against you.

9. GENERAL

9.1 Nothing in these Terms gives you any right, title or interest in or to any of our assets or rights other than the Products and Services (excluding any intellectual property rights in or relating to them and their packaging and storage, together with any associated goodwill), and then only in accordance with these Terms.

9.2 Any confidential information or intellectual property provided by us in connection with the Products and/or Services, including these Terms, remains at all times our confidential and proprietary information and may be used by you solely to complete the relevant order and for no other purpose and must otherwise be kept in strict confidence by you. Any confidential information provided must immediately be returned to us on our request (which may be made at any time).

9.3 You must not:

- (a) repackage Products using our intellectual property (including trade marks) or packaging;
- (b) modify or in any way alter, deface or cover up all or any part of our intellectual property (including trade marks) or any part of the appearance or get-up of packaging or storage in respect of the Products; or
- (c) use any other intellectual property (including trade marks) in connection with, or in association with, our intellectual property (including trade marks), without our prior written consent.

9.4 You must ensure that you and your officers, employees, agents, contractors and advisers do not disclose any information provided by us to you unless:

- (a) the information is in the public domain (other than by reason of breach of any confidentiality obligation owed to us by anyone); or
- (b) the disclosure (including its form and context) is first approved by us in writing.

9.5 These Terms and your order, and any dispute which arises under, out of or in connection with these Terms or your order, their negotiation or their subject matter are governed by the law of Victoria, Australia and you and us both irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Victorian courts. You and us must seek to resolve any differences by direct negotiation for not less than 10 days before resorting to legal action.

9.6 Any personal information collected by you or us in connection with these Terms must only be used or disclosed for the purposes of ensuring performance of these Terms or your orders and any future like agreements or arrangements. This may include disclosure within your or our organisations and to other parties involved in performing these Terms or future like agreements or arrangements. You and we agree to comply with relevant privacy laws in respect of any personal information collected in connection with these Terms, any orders and any future like agreements or arrangements.

9.7 In these Terms, another grammatical form of a defined word or expression has a corresponding meaning.

9.8 Unless otherwise agreed in writing, all references to amounts of money are references to amounts in Australian currency.

9.9 Unless otherwise agreed in writing, reference to weights, quantities or other measures are, unless otherwise agreed in writing, references to that weight, quantity or other measure within a variance of plus or minus 5%.

9.10 Headings are inserted for ease of reference only and do not affect the interpretation of these Terms.

9.11 If part or all of any provision of these Terms or your order or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision or part of it cannot be interpreted in that way, the provision or part of it will be severed from these Terms or your order and the remaining provisions continue in full force and effect.

9.12 Any notice given by us under, or failure by us to insist on strict compliance with, any agreement between you and us (including an accepted order from you) or any delay by us in exercising our rights under any such agreement is not a variation or waiver of any provision of that agreement or of any right available to us.

9.13 A rule of construction does not apply to the disadvantage of us because we prepared these Terms.

9.14 You may not assign or novate any or all of your rights or obligations under these Terms to a third party or purport to do so without our prior written consent (which may be given or withheld in our complete discretion).

9.15 All notices under these Terms must be in writing and delivered by you or us to the other at the address in Australia that the other specifies from time to time.

9.16 Any variation to, or amendment or replacement of, these Terms as they apply to you must be authorised in writing by us through a duly authorised signatory on our behalf.

9.17 If you are a company or trust, we can terminate these Terms immediately by notice in writing to you if we form the view that you have undergone a change of control or other change of circumstance whereby we conclude that we would be dealing with a different party or are subject to different commercial considerations if we were to continue dealing with you. We can also terminate these Terms immediately by notice in writing to you if you sell or transfer all or a material part of your business, assets or undertaking (or agree to do so) without our prior written consent.

9.18 No delay or failure to exercise any of our rights or remedies will be a waiver of any of our rights or remedies.

10. STOCKFOOD AND SECONDS

10.1 If any Product is sold to you as stockfood, seconds or any similar classification you acknowledge that:

(a) our Standard Terms and Conditions of Sale for Stockfeed and Seconds, which are available on our website at www.fonterra.com.au/contractterms apply to the sale;

(b) the Products are not fit for human consumption and are sold by us on the representation from you that the Products will be exclusively used for the purpose of animal feed; and

(c) you will be liable to and indemnify us for all loss or damage (including damage to reputation) that we or any related company of Fonterra Co-operative Group Limited may suffer if you breach this clause