



# FONTERRA STANDARD TERMS OF PURCHASE Fonterra Brands (NZ) Limited



The following Fonterra Brands (NZ) Limited Standard Terms of Purchase (“**Terms of Purchase**”), as amended from time to time, apply to all of our purchases of products, goods (hereinafter after referred to as “**products**”) and/or services from you unless otherwise agreed in writing. References in these Terms of Purchase to “you” or “your” refer to the Supplier and “us,” “we” or “our” refers to the Fonterra purchasing entity.

**1. Purchase of Products.** We will purchase from you and you will supply to us the products and/or services on these Terms of Purchase and on the terms (if any) set out in a purchase order placed by us to you for the supply of the products and/or services and each purchase order for products or services submitted by us incorporates, and is subject to, these Terms of Purchase notwithstanding anything to the contrary in any of your documentation and to the exclusion of your standard terms and conditions of sale. The products and/or services will be free from any liens, charges, security interests or any other encumbrances. You will be responsible for payment of all freight, financing costs, customs and other charges, costs and expenses related to the supply and delivery of the products and/or services unless otherwise agreed in accordance with the delivery terms stated in the relevant purchase order. We will pay the price for the products and/or services in accordance with clause 4.

**2. Approved Plant.** We have the right to approve or reject in writing the plant, factory or other premises used by you in connection with the manufacture and storage of the products or the provision of services (the “**Plant**”).

**3. Delivery of Products.** You will supply the quantity of products in accordance with the delivery terms and on the delivery date(s) specified in the purchase order, and unless otherwise stated on the purchase order on a Delivery Duty Paid (DDP Incoterms 2020) basis. We may refuse to accept, or pay for, delivery of any products or the provision of any services where there is no valid purchase order. You will notify us as soon as practicable of any circumstances that may have a material effect on your ability to meet the specified delivery requirements or to supply the products and/or services in accordance with these Terms of Purchase and any purchase order. If you make partial delivery and/or fail to deliver the total quantities as specified on the relevant order, we may cancel the entire order at no cost to ourselves and we may return any partial deliveries to you at your cost. Where a purchase order provides a time for delivery of the products and/or services time is of the essence with respect to that delivery. We may vary the delivery time and/or the delivery address at any time prior to delivery by providing you with reasonable notice of those changes. Without prejudice to any of our other rights and remedies, we may charge storage and transportation expenses if you fail to deliver products or services at the times specified in a purchase order or at such other time we deem acceptable for delivery. You will indemnify us against any loss, damage, injury, penalties, costs and expenses (including legal expenses) arising from such delay.

**4. Payment.** Unless otherwise required by law, we will pay for any products and/or services delivered in accordance with these Terms of Purchase on the first working day two months from the first day of the month following the invoice date. The invoice should be received by us by the 15th of the month following supply of the products or provision of the services to which the invoice relates. Invoices must refer to the relevant purchase order number and be sent to the address specified on the purchase order.

**5. Title and Risk.** Title to the products will pass from you to us upon delivery in accordance with the delivery terms contained in the purchase order or otherwise agreed with you, or if earlier, when we make any payment for the products. Risk in each product remains with you until completion of delivery and acceptance of the products by us, except when a product is within our exclusive possession or control, in which case, risk shall pass to us when such product is in our exclusive possession or control. The receipt or signature of a delivery order by one of our authorised officers is not acceptance of either the quality or quantity of the products. Our acceptance of any products will be subject to our inspection and subsequent use of the products.

## **6. Supplier Obligations.**

- (a) Where the purchase order includes provision of services you must promptly and/or at the correct intervals supply those services in accordance with best industry practice.
- (b) While on our sites, you, your employees, representatives and agents must at all times comply with:

- (i) our site rules and site access, health and safety procedures and requirements and security requirements;
  - (ii) the provisions of any relevant legislation, codes or standard; and
  - (iii) any other reasonable directions given by us.
- (c) Where the purchase order includes any installation by you, you must promptly complete installation by the date set out in the purchase order or if no date is provided, in accordance with best practice, at times reasonably approved by us and with minimum disruption.
- (d) You must notify us immediately if you become aware that any authority requires you to recall any or all of the products supplied by you to us. You must use reasonable endeavours to provide replacement products to us as soon as possible. You must meet, on demand by us, any reasonable costs we incur in purchasing alternative products and we can recover such additional costs against you as a debt due to us.

## 7. Pricing.

- (a) The price is as set out in the purchase order (unless otherwise agreed in writing) and is the only amount we must pay. 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.
- (b) 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 a valid tax invoice in accordance with the GST Act.

## 8. Supplier Warranties. You warrant that:

- (a) each service will be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons and to the best industry standards;
- (b) all products and/or services supplied by you will comply with the specifications or requirements specified in, or accompanying, the purchase order or as otherwise communicated to you;
- (c) all products and/or services will be of merchantable quality and fit for the purpose for which they are intended or stated by us to you;
- (d) each product (and its components) will:
- (i) 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 (excluding where such products are second-hand);
  - (ii) not be subject to any mortgage, charge, lien, encumbrance or retention of title; and
  - (iii) be free from any defect (including any latent defect) in design, materials and workmanship and not emit any contaminant or hazardous substance;
- (e) all products can be traced as to source and batch in the event of any recall issues arising and adequate product samples are kept and properly stored in accordance with good manufacturing practice;
- (f) you will comply with all applicable laws, regulations, and carry out (and maintain all relevant correspondence, documents and records relating to) any necessary regulatory testing relating to manufacture, quality, storage, packing, transportation, export or sale of the products and/or services, or the performance of your obligations under these Terms of Purchase;
- (g) you must hold all consents, permits and licences necessary to provide the products or perform the services;
- (h) you will (at your cost, and with reasonable assistance from us) be responsible for obtaining, and will provide us with, all necessary documents and other information required to ensure that the products are properly cleared for export and import to enable delivery, and that the products otherwise meet all relevant export, import and other legal and regulatory requirements (including those relating to consumer product safety), including those that we may have notified to you; and
- (i) our ownership, possession, use or resale of any product or the use or result of a service supplied by you will not infringe any proprietary or other intellectual property right or interest of any person and you must provide

within the price any licence or other authorisation from any person necessary in order for us to obtain the full benefit and use of the products or service.

These warranties are additional to any other warranties given by you or implied by custom or law, whether statutory or otherwise. You will, to the extent possible, pass on to us the benefit of any warranty received from any other person with the intent that we may have recourse against those persons either directly or through you. You will promptly remedy each warranty claim to our reasonable satisfaction. Warranties start again for the full period on completion of remedying each defect.

**9. Required Information.** You will provide audit reports, manufacturing specifications, product analysis certificates and other testing certification and documentary records relevant to the Plant, the products and/or services and the manufacture and sale of the products and the provision of the services as reasonably requested by us from time to time.

#### **10. Intellectual Property.**

- (a) You grant us a non-exclusive, non-transferable licence to use your intellectual property (including any trademarks or promotional material) in connection with the use, marketing and sale of the products and/or services by us.
- (b) Where any license or other authorisation from any person is required to own, possess, use or resell any product or any component you will, at no extra cost to us, procure an irrevocable and unrestricted licence on a non-exclusive and transferable basis for us to own, possess, use and resell the product.
- (c) 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 for us as part of the provision of any products or service will become our property.

**11. Defective Products.** We may carry out any reasonable acceptance tests of any product and/or service. You will take all necessary steps at your cost to rectify any failure of the products and/or services to meet the specifications or comply with these Terms of Purchase; and any other defect relating to the quality, safety or suitability for use of the products and/or services (each, a **"Defect"** or **"Defective"**). If you become aware that any products (whether delivered or not) and/or services are Defective, or do not otherwise meet the relevant specification or requirements of these Terms of Purchase, you will immediately advise us in writing of all identified issues and their potential impact on us. Without limitation to any other provision, if any Defect which is a breach of warranty results in us not receiving the expected performance of value from the product and/or services, you will at your own cost, as requested by us, either:

- (a) promptly replace the product (with a full warranty) or re-perform the services; or
- (b) provide a full refund, in which case we may, at your risk and expense, return the product.

#### **12. Confidentiality.**

- (a) All confidential information and any intellectual property provided by us to you will remain our property, be kept confidential by you and will be used by you solely for the provision of the products and/or services. All of our confidential information and intellectual property will be returned to us following the expiry or termination of the purchase order or at any other time on request.
- (b) All confidential information and any intellectual property provided by you to us shall remain your property, be kept confidential by us and shall be used by us solely in connection with these Terms of Purchase. All of your confidential information and intellectual property shall be returned to you following the expiry or termination of the purchase order or at any other time on request.

**13. Indemnity.** Except to the extent that the liability results directly from any act or omission by us, you will indemnify us and our employees, agents and contractors (each an **"Indemnified Party"**) against all claims, expenses, losses, damages and costs of any kind whatsoever (**"Liabilities"**) (including all Liabilities arising as a result of damage to a third party's property, injury to or death of any person, or any claim by any third party (including any subsequent purchaser of the products from us), all legal costs in relation to any Liabilities, and all product recall costs and regulatory fines and penalties) sustained or incurred by any such Indemnified Party arising from:

- (a) any breach of a warranty;
- (b) any Defect;
- (c) any breach of clause 12(a) of these Terms of Purchase;

- (d) 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 of Purchase; or
- (e) any fraud, dishonesty, misrepresentation or wilful default by you.

#### 14. Rights and Liabilities.

- (a) All of our remedies contained in these Terms of Purchase will be cumulative and in addition to any rights or remedies we may have under applicable law.
- (b) We may set off any amount owed by you to us or any of our related companies or any other entity within the wider Fonterra group under these Terms of Purchase or any other agreement against any amount owed by us or our Affiliate to you under these Terms of Purchase or any other agreement.
- (c) If you fail to comply with any obligation in these Terms of Purchase 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 unable to pay your debts as they fall due or otherwise 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 of Purchase or at law:
  - (i) cancel or suspend the purchase order or any uncompleted portion thereof; or
  - (ii) recover from you any direct loss or cost (including full legal costs) suffered by us.
- (d) Unless otherwise expressly agreed, neither you nor we will be liable to the other for any indirect, consequential, exemplary, special or punitive loss or damage suffered or incurred by the other pursuant to these terms.

**15. Policies and Codes.** As a supplier to Fonterra, you must meet the requirements of the following policies and codes as they apply to you, your subcontractors and the products and/or services:

- (a) Sustainability Code of Practice which can be found at <https://www.fonterra.com/nz/en/terms-and-conditions.html>; and
- (b) Fonterra's Standard Ingredient Specification Requirements (where notified to you).

**16. Insurance.** You will take out and maintain public and product liability insurance cover, and professional indemnity insurance if appropriate, of not less than the coverage amount specified in a purchase order or otherwise communicated to you by us from time to time in respect of any potential liability, loss or damage that may arise relating to the performance of your obligations under these Terms of Purchase with a reputable insurer who is satisfactory to us. You agree to provide evidence of such insurance to us upon request.

**17. Notices.** Any notice to be given under, or in connection with, these Terms of Purchase will be given in writing to the other party's physical or contact email address and delivered by hand, prepaid post, or by email to the email address for the other party's contact person.

**18. Assignment.** You will not assign or attempt to assign or otherwise transfer or subcontract any right or obligation in respect of the supply of the products and/or services pursuant to these Terms of Purchase.

**19. Relationship Between the Parties; Security Interests.** Nothing in these Terms of Purchase or any purchase order will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between us. Neither you nor we will have the authority to act for, or to incur any obligation on behalf of, the other party. Nothing in these terms creates a security interest in any products supplied to us in accordance with these Terms of Purchase.

**20. Waivers; Modifications.** Any modification to or variation or waiver of these Terms of Purchase must be in writing and signed by the parties. No failure or delay by any party in exercising any rights, power or privilege under these Terms of Purchase will operate as a waiver, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege.

**21. Survival.** Those clauses that by their nature are intended to survive termination or expiration of these Terms of Purchase (including for the avoidance of doubt termination, confidentiality, liability, notices, disputes provisions and any general interpretation provisions) shall so survive.

**22. Entire Agreement; Severability.** These Terms of Purchase and the terms contained in a purchase order (and any documents referenced in or forming part of the purchase order) constitutes the entire agreement and understanding between the parties and supersedes any previous written or oral agreement or understanding between the parties in relation to the supply of the products and/or services. If any of these Terms of Purchase is held to be invalid, illegal or unenforceable, it will be severed and the remainder of these Terms of Purchase will remain in full force and effect.

**23. Governing Law.** These Terms of Purchase will be governed by and interpreted in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand. The United Nations Convention on Contracts for the International Sale of Goods 1980 will not apply to these Terms of Purchase.