

STANDARD TERMS AND CONDITIONS OF SUPPLY SINGAPORE

Fonterra (SEA) Pte Ltd
Fonterra Brands (Singapore) Pte Ltd



1. APPLICATION OF THESE TERMS

1.1 These standard terms and conditions of supply ("**Terms**") apply to:

- (a) the supply of all goods by Fonterra (SEA) Pte Ltd (UEN 197701784C), Fonterra Brands (Singapore) Pte Ltd (UEN 197400676H) or other Fonterra entity incorporated in Singapore that is noted in the contract confirmation ("**Fonterra**"), to the person acquiring the goods from Fonterra, including that person's agent, contractor or representative ("**Buyer**"); and
- (b) all price lists, quotations and proposals Fonterra gives to Buyers or prospective Buyers.

2. QUOTATIONS AND REQUESTS FOR SUPPLY

2.1 Fonterra may amend or withdraw price lists or quotations at any time. Any price list, quotation or proposal given by Fonterra does not constitute an offer capable of acceptance or an agreement by Fonterra to supply the goods to the Buyer. Any request for goods by the Buyer ("**Order**") is an irrevocable offer to purchase the relevant goods subject to these Terms and Fonterra may accept or reject any Order. An Order placed electronically is binding on the Buyer, but not Fonterra.

3. CONTRACT CONFIRMATION

3.1 An agreement for the sale of goods on these Terms is formed once Fonterra accepts the Offer in writing ("**contract confirmation**"), or on the delivery of the goods to the Buyer, whichever is the earlier. These Terms apply to all deliveries of goods pursuant to a contract confirmation and any agreed delivery schedule ("**delivery schedule**").

3.2 Fonterra may invoice the Buyer for all the relevant goods in accordance with clause 8, irrespective of whether the Buyer subsequently submits shipping or delivery requests, purchase orders or other requests in respect of those goods.

3.3 Fonterra may from time to time enter into agreements with third parties under which those third parties will manufacture, supply or deliver part or all the goods referred to in a contract confirmation.

3.4 Changes or additions to an Order are only binding on Fonterra if confirmed by a contract confirmation. Fonterra may, acting reasonably, increase or decrease quantities of goods agreed upon in the contract confirmation in connection with:

- (a) standard packaging,
- (b) minimum order or shipping quantities, or
- (c) damage during loading,

and the Buyer must buy and pay for the quantity of goods as delivered.

4. SHIPMENT

- 4.1 Fonterra will agree with the Buyer as part of the delivery schedule, a proposed Estimated Time of Arrival (“**ETA**”) for goods to arrive at the agreed port or other delivery place. Delivery times are not guaranteed. Fonterra will use all reasonable endeavours to ensure that the goods are shipped so that the goods arrive within a period of 20 days prior to, and up to 30 days after, the date specified as the ETA. If there is no agreed delivery schedule, Fonterra will use reasonable endeavours to supply the goods to the Buyer at an even rate across the delivery period contemplated by the contract confirmation. Any claims from the Buyer for late delivery apply only from the date Fonterra receives a written notice of default.
- 4.2 If Fonterra is unable to supply any goods in a contract confirmation for any reason, Fonterra may offer to supply the Buyer with substitute goods with specifications that are not materially inferior to the original goods or offer to supply alternative goods. If the Buyer does not agree to Fonterra supplying the Buyer with substitute or alternative goods, Fonterra may cancel the relevant shipment without liability.
- 4.3 Delivery of goods is on the International Chamber of Commerce Incoterms (2020) (“**Incoterms**”) basis specified in the contract confirmation. If no Incoterms are set out in the contract confirmation, Fonterra may at its sole discretion rely on the last Incoterms agreed with the Buyer as held in Fonterra’s records or deliver Incoterms CFR.
- 4.4 Unless the applicable Incoterms provide otherwise, the Buyer is solely responsible at its own cost for meeting all insurance, import and regulatory requirements relating to the goods, and for any damaged or lost goods in transit. The Buyer is also responsible for ensuring the goods meet all legal and regulatory requirements in the country or territory in which the goods are being shipped, re-supplied or used by the Buyer.
- 4.5 Fonterra may round the quantity of goods in a shipment up or down as necessary to ensure the Buyer receives full container loads (or other applicable load unit) of the goods. The amount which the Buyer is required to pay for such goods must be proportionately increased or decreased.
- 4.6 If in Fonterra’s reasonable opinion the arrangements for the delivery of the goods becomes commercially impractical, Fonterra will propose alternative arrangements with the Buyer, such as a commercially reasonable substitute delivery location or a commercially reasonable substitute method of supply. If the Buyer disagrees with the proposed alternative arrangements, Fonterra may cancel the relevant shipment without liability.
- 4.7 If the Buyer requests Fonterra to delay or bring forward an Order, or if the Buyer delays taking delivery of the goods as agreed in the contract confirmation or delivery schedule, Fonterra may recover from the Buyer an administration fee and Fonterra’s costs arising from the delay including the costs associated with financial hedging, storage, logistics, holding the goods, and additional export fees. Without affecting Fonterra’s other rights, if the Buyer is unable to take delivery of the goods as agreed in the contract confirmation, Fonterra may cancel the applicable shipment and any subsequent shipments without resulting liability. Fonterra may then resell the goods and the Buyer must indemnify Fonterra for any loss or costs (including any goods write-off costs) for any storage, disposal, write-down, transport or logistics.

5. DEFECTS, SHORTFALL AND ACCEPTANCE

- 5.1 The Buyer must inspect the goods on delivery. All claims in respect of defective goods or alleged shortfall in volume must be notified to Fonterra as soon as possible and within 30 days of delivery, failing which the Buyer is deemed to have accepted the goods as compliant and the volume as correct.

- 5.2 The Buyer must keep any allegedly defective goods stored separately from all other goods and in the state or condition in which they were supplied so that Fonterra has an opportunity to inspect them. The Buyer must provide all assistance reasonably requested by Fonterra to assess the claim, including providing access the place where the goods are stored and any analysis or test results carried out by the Buyer. If Fonterra accepts that it is responsible, the Buyer must at Fonterra's cost, either destroy the goods or make them available for collection, as Fonterra directs.
- 5.3 Fonterra is not liable for any defect in, or damage to, goods (including that relating to the inappropriate storage, use or care of the goods) or their packaging to the extent the Buyer has caused or contributed to the claimed defect or damage, or if the goods are outside any written warranty period. The Buyer must not settle or compromise a claim by a third party concerning allegedly defective or damaged goods without Fonterra's prior written consent.
- 5.4 Except when it is unlawful, the Buyer must notify Fonterra before the Buyer provides information about the goods to a government or regulatory body.
- 5.5 The Buyer must co-operate with and provide all reasonable assistance to Fonterra in relation to any recalls or withdrawals from sale of the goods (including any of the Buyer's goods incorporating the goods supplied by Fonterra) for any reason, with the objectives of preserving the parties' reputation and goodwill, and ensuring public health and safety is maintained.

6. RISK AND TITLE

- 6.1 Risk in all goods passes to the Buyer on delivery (in accordance with the applicable Incoterms) even though title may not. Title in all goods remains with Fonterra until such time as full payment is received in cleared funds for all amounts owing by the Buyer for the goods supplied.
- 6.2 Subject to 6.4, until title to the goods passes to the Buyer, the Buyer:
- (a) holds the goods as Fonterra's fiduciary agent and bailee;
 - (b) must store the goods separately from all other goods in its possession and mark them in such a way that they are clearly identified as Fonterra's property; and
 - (c) must not pledge or allow any encumbrance, lien, or other interest to arise over the goods.
- 6.3 Without affecting Fonterra's other rights, until the Buyer has paid Fonterra in full, Fonterra may repossess, sell or dispose of the goods supplied.
- 6.4 The Buyer may resell or use the goods in the ordinary course of its business. In such cases, the Buyer must hold the proceeds of such sale or use on trust for Fonterra and must account to Fonterra for such proceeds until Fonterra receives payment in full for the goods.

7. PRICE AND TAXES

- 7.1 Unless otherwise agreed in writing, the price for the goods is set out in the contract confirmation or shipment schedule. The price may include additional amounts for any incidental services. The price may be increased or decreased if there is a change in an order as set out in clause 3.4.
- 7.2 Unless the Incoterms basis expressly provides otherwise, the price excludes applicable sales taxes, customs, excise, duties, levies, value-added or goods and services related tax. The price must be increased to reflect any such costs being imposed on Fonterra and the

Buyer must hold Fonterra harmless in respect of any such costs.

8. PAYMENT AND INVOICING

- 8.1 Fonterra will not ship any goods unless payment arrangements have been agreed with the Buyer, or full payment has been received in advance of shipment. Payment arrangements may require letters of credit, documentary collection, bank guarantees or deposits. All payments must be made net of any bank charges and must equal the amount invoiced for the applicable goods. If no payment arrangement is agreed, shipment of the goods must be delayed to a future date until a payment arrangement is agreed and the Buyer must hold Fonterra harmless against any direct costs incurred by Fonterra resulting from such delay.
- 8.2 If Fonterra has agreed in writing that the Buyer will pay for goods based on the date of the bill of lading for those goods, Fonterra must receive payment by that agreed date or Fonterra may refuse to supply the goods. Any delays in supply and related costs caused by late payment to Fonterra are the Buyer's responsibility.
- 8.3 Payment must be received on the due date specified in the contract confirmation or invoice. If no due date is specified, then payment must be received within 15 days of the date of the invoice. All payments to Fonterra must be in full without deduction, set-off or counterclaim. If the Buyer grants Fonterra a direct debit mandate, Fonterra has a period of 30 days to apply the direct debit. If the Buyer is legally required to make any deduction or withholding on account of tax from any sum payable to Fonterra, then the sum payable must be increased to ensure that, after the making of such deduction or withholding, Fonterra receives a net sum equal to the sum that it would have received and retained had no such deduction or withholding been made.
- 8.4 The Buyer must notify Fonterra within 7 days of receiving an invoice if the Buyer believes that the invoice is not correct, including full details of the claimed error. The Buyer must make payment of the undisputed amount due on any disputed invoice on the due date. Once the dispute is resolved, the Buyer must pay the resolved amount due within 14 days. Where an invoice remains unpaid (whether in whole or in part) after the due date, and the Buyer has not notified Fonterra of any reasonable basis for non-payment, the parties agree that there is no discrepancy or error with respect to the invoice.
- 8.5 If an invoice remains unpaid after the due date for payment Fonterra may:
- (a) charge penalty interest at the rate of 1.5% monthly (or, if less, the maximum amount permitted by law), such interest to accrue daily and compound monthly from the due date until payment has been received by Fonterra in cleared funds. Fonterra may also recover any collection charges including legal expenses incurred by Fonterra in attempting to recover any overdue amount from the Buyer with a minimum of 15% of the amounts due;
 - (b) withhold or defer any future shipment pending payment without liability to Fonterra; and/or
 - (c) use applicable remedies (other than arbitration referred to in clause 12.8) such as obtaining judgment in the territorial courts that may be enforced against the Buyer where this is available in accordance with local jurisdiction.
- 8.6 All references to amounts of money are references to the currency set out in the relevant contract confirmation or shipment schedule, or as otherwise agreed between the parties, and are payable in that currency.

9. DEFAULT

9.1 If the Buyer defaults in payment or is otherwise in breach of these Terms, or in Fonterra's reasonable opinion, is likely to default in any payment due to Fonterra, or where a liquidator, receiver, controller, trustee or other insolvency administrator is appointed, or any similar situation occurs in respect of the Buyer or any of its assets, Fonterra may without limiting its rights do one or more of the following:

- (a) withhold or cancel the relevant shipment or any subsequent shipment; or
- (b) retain any deposit the Buyer may have paid or draw on any relevant letter of credit, bank guarantee or standby letter of credit; or
- (c) reclaim or resell the goods in the Buyer's possession or under its control and may enter premises where Fonterra believes that the goods are stored or held to do so, and recover from the Buyer all costs of doing so; or
- (d) cancel the applicable goods supply contract,

and all monies owing and outstanding by the Buyer on any account whatsoever are immediately due and payable. Fonterra is not liable to the Buyer for any losses the Buyer incurs as the result of Fonterra exercising the above rights.

10. WARRANTIES

10.1 Fonterra warrants only (to the exclusion of any implied warranties or guarantees) that the goods meet the specifications (including as to residual shelf life) at the point of delivery as set out in the Fonterra selling specification for the goods type described, as supplemented by the contract confirmation and/or shipment schedule. To the maximum extent permitted by law, Fonterra makes no other representations or warranties in respect of the goods, including representations or warranties concerning fitness for purpose, compliance with any laws, regulations or rules of any market in which the goods are used, sold or otherwise dealt with, or appropriateness for the Buyer's needs of any goods, and the Buyer must assure itself of these matters.

10.2 Fonterra may from time to time provide advice, recommendations and statements with respect to the goods. However, Fonterra does not warrant or guarantee the accuracy or completeness of that advice, recommendations or statements or the results obtained by using the goods. Fonterra expressly disclaims any liability for any damage to the Buyer from reliance on such advice, recommendations or statements, which must be at the Buyer's own risk having made its own appropriate enquiries. Any sample, description or visual representation or details of goods provided to the Buyer are representative only and the actual goods supplied may differ.

10.3 If any goods are sold to the Buyer as stockfeed, second quality or any similar classification the Buyer acknowledges that the goods are not fit for human consumption and are sold on the representation from the Buyer that the goods must be exclusively used for the purpose of animal feed.

10.4 To the extent permitted by law, all conditions and warranties that are not expressly set out in these Terms are excluded. This does not limit any applicable statutory guarantees provided under any applicable law, including the *Competition Act* (Cap 50B, Singapore) and the *Sale of Goods Act* (Cap 39, Singapore), to the extent they cannot be excluded.

10.5 The Company and the Buyer agree that the Goods are supplied for the purposes of a business and that the *Consumer Protection (Fair Trading) Act* (Cap 52A, Singapore) does not apply.

11. LIMITATION OF LIABILITY

- 11.1 Fonterra is not in any circumstances be liable for any claim in contract, tort (including negligence) or equity, under statute or otherwise unless notice of the claim is given in writing to Fonterra within 30 days of the Buyer first becoming aware of a claim arising.
- 11.2 Notwithstanding any other provision of these Terms, Fonterra will not be liable for any for any indirect or consequential loss or damage, regardless of whether or not that loss or damage was, or ought to have been contemplated by Fonterra, including but not limited to loss, damage to person or property, any loss of revenue, profits, goodwill, business or anticipated business, anticipated savings, any business interruption, loss of data, or goods recall costs, or damage alleged to arise from the supply of goods for any special or particular purpose, and the parties agree that no such purpose has been communicated to Fonterra and is expressly disclaimed.
- 11.3 If the goods are delayed in being shipped to the Buyer due to circumstances within Fonterra's reasonable control, Fonterra's maximum aggregate liability is limited to the direct costs incurred by the Buyer as a direct result of such delay is limited to five percent (5%) of the invoice value of the shipment the subject of the delay. This is the Buyer's sole remedy if there is a delay.
- 11.4 If the goods:
- (a) do not comply with the agreed specifications or,
 - (b) there is a total failure by Fonterra to supply the goods,
- and in each case for reasons which Fonterra is responsible, Fonterra may at its sole election, refund all or part of the price of the goods to the extent payment has been made or replace or rework all (or the unrefunded) portion of the goods.
- 11.5 In addition to the remedy in 11.4 (and subject at all times to clauses 11.1 and 11.2), if the Buyer has incurred any direct costs or direct damages resulting from either 11.4(a) or 11.4(b) (in each case for reasons which, and to the extent, Fonterra is responsible), Fonterra's maximum aggregate liability is to the maximum extent permitted by law limited to twenty percent (20%) of the relevant invoice value of the non-conforming goods or the goods not supplied.
- 11.6 In respect of any other claim by the Buyer against Fonterra, whether made in contract, tort (including negligence) or equity, under statute or otherwise, that directly or indirectly arises out of or in connection with any goods supply governed by these Terms (in each case for reasons which, and to the extent, Fonterra is responsible, and subject at all times to clauses 11.1 and 11.2), where the Buyer has incurred any direct costs or direct damages Fonterra's maximum aggregate liability is (to the maximum extent permitted by law) limited to twenty percent (20%) of the relevant invoice value of the goods the subject of the claim.
- 11.7 Any reworking of the goods under clause 11.4 must be at such place as Fonterra may specify and Fonterra may require the Buyer to arrange for the transport, at Fonterra's cost, of any such goods to be reworked or made good.
- 11.8 Where the Buyer contends that costs or damages arising from any third party claim are Fonterra's liability (and as a precondition to Fonterra accepting any such liability), the Buyer irrevocably grants Fonterra the sole control of the defence and all related settlement negotiations and other proceedings, and the Buyer must assist and co-operate with Fonterra as it reasonably requests.
- 11.9 The Buyer must indemnify Fonterra for any liability, costs, damages or claims suffered by

Fonterra and caused directly or indirectly by the Buyer's handling, storage, use or sale of the goods, or by any negligent act or omission or breach of any law applicable to the handling, storage, use or sale of the goods (including as incorporated into another good or service) by the Buyer.

12. GENERAL

- 12.1 All notices under these Terms must be in writing and delivered by one party to the other at the address that the other specifies from time to time. Where any notice is required to be given by the Buyer to Fonterra under these Terms in respect of any damage, defect or shortfall in the contracted volume of goods, the Buyer must do so within the time stated in these Terms or Fonterra is not be liable in respect of any claim or potential claim. The Buyer must provide full details of the alleged problem with the goods, and subsequently any other information reasonably requested by Fonterra.
- 12.2 The Buyer agrees that any packaging accompanying the goods which identifies the goods as being manufactured or supplied by Fonterra must be disposed of in a manner that prevents its re-use or, if it is to be re-used, must be modified in appearance so that no reference or connection to Fonterra can be made. Unless expressly otherwise agreed in writing, the Buyer acknowledges and warrants that any goods purchased under these Terms are purchased solely for its own use and that the Buyer must not re-supply the goods in any market.
- 12.3 Any confidential information or intellectual property provided by Fonterra in connection with the goods, including any price list, the contract confirmation and shipment schedule, remains Fonterra's confidential and proprietary information and may be used by the Buyer solely to complete the relevant shipment and for no other purpose and must otherwise be kept in strict confidence by the Buyer. The Buyer agrees that damages are not an adequate remedy for any breach of this clause and that Fonterra may seek an injunction or other interim relief to protect its rights. Fonterra will hold in confidence any information which the Buyer identifies in writing to Fonterra as being confidential.
- 12.4 All intellectual property which is owned by, or is proprietary to, or which is created during or in connection with the supply of the goods, remains owned exclusively by Fonterra. The Buyer has no right or interest in or licence to use any of Fonterra's intellectual property (including trade marks) without Fonterra's prior written consent.
- 12.5 The Buyer must not give or make any undertaking, assertion or representation in relation to the goods without Fonterra's prior approval in writing.
- 12.6 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or any transaction conducted in accordance with, or pursuant to, these Terms.
- 12.7 These Terms supersede and exclude all discussions, representations, terms and/or conditions of trade, and all written or oral agreements, arrangements and understandings between Fonterra and the Buyer, whether made during negotiations between Fonterra and the Buyer or at any subsequent time, unless the Buyer has an existing written agreement, arrangement or understanding with Fonterra in relation to the supply of goods, in which case that existing agreement, arrangement or understanding prevails over these Terms. No Buyer's terms in any Order or request for supply shall apply unless expressly agreed to in writing by Fonterra.
- 12.8 These Terms are governed by the laws of Singapore to the exclusion of the law of any other country. Any dispute, difference or claim arising out of or in connection with a goods supply contract or these Terms, if not resolved by any informal dispute mechanism agreed between the parties, must be referred to and finally resolved by arbitration in accordance

with the Singapore International Arbitration Centre ("**SIAC**") Arbitration Rules in force at the time of the dispute arising ("**Rules**"). The place of arbitration must be Singapore. The tribunal will consist of one arbitrator appointed in accordance with the Rules. For the purposes of article 6 of the Rules, the appointing authority must be the SIAC International Panel. The language of the arbitration must be English.

- 12.9 Any personal information collected by the Buyer or Fonterra in connection with these Terms must only be used or disclosed for the purposes of ensuring performance of these Terms and any similar future arrangement. This may include disclosure within the parties' respective organisations and to other parties involved in performing these Terms. Fonterra and the Buyer agree to comply with relevant privacy laws in respect of any personal information collected in connection with these Terms, any shipments and any similar future arrangement.
- 12.10 Any notice given by a party, or failure by a party to insist on strict compliance with, or any delay in exercising a party's rights under, these Terms is not a variation or waiver of any provision or of any right available to that party.
- 12.11 The Buyer must not assign or novate any or all its rights or obligations under these Terms to a third party or purport to do so without Fonterra's prior written consent (which may be given or withheld in Fonterra's complete discretion). The Buyer agrees and consents that Fonterra may novate, assign or transfer the benefits and obligations of this agreement to any affiliate of Fonterra, or any successor in title at Fonterra's discretion, and will if requested by Fonterra execute any document or do any other thing to give effect to the novation, assignment or transfer.
- 12.12 In addition to Fonterra's other rights, neither Fonterra nor the Buyer is liable for the failure to perform or delay in the performance of its obligations pursuant to these Terms to the extent such failure or delay is caused by or results from a Force Majeure Event. The party affected by the Force Majeure Event must promptly notify the other party using the quickest possible means of communication available to it under the circumstances, describe the circumstances of the Force Majeure Event, and promptly notify the other Party when the Force Majeure Event or its impact on such party has been abated. If a Force Majeure Event persists for more than 60 calendar days, the party not prevented to perform by the Force Majeure Event may dissolve the relevant agreement as far as affected by the Force Majeure Event, without being obliged to pay any compensation.
- 12.13 If the Force Majeure Event is connected to regional weather conditions, Fonterra is not required to transfer milk or other materials between regions and between processing plants. Where overall milk or other material volumes have been impacted by a Force Majeure Event, Fonterra may allocate goods to its customer orders on a pro rata basis as it determines in its sole discretion.
- 12.14 "**Force Majeure Event**" means an event or circumstance beyond the reasonable control of the affected party or its suppliers that hinders or prevents the performance of its obligations under these Terms and that cannot be foreseen or if foreseeable is unavoidable, including without limitation, a natural hazard outside human control, or other natural disaster, an act of government or any sovereign or military, confiscation, nationalization, requisition, governmental sanction, embargo or similar action, any act of foreign enemies, hostilities, civil war, revolution or other act of war or terror, civil unrest, invasion, a blockade, insurrection, riot, epidemic or pandemic (as defined by the World Health Organisation), landslide, flood, drought, tsunami, earthquake or fire, public power outages, labour strikes (strikes and other labour unrest that affect only one party and are not caused by a general or mass strike will not constitute an excusable delay), or the order of any court or government authority.
- 12.14 The parties agree to take reasonable steps to mitigate any loss or damage that party may

suffer under these Terms.

- 12.15 Clerical errors or omissions, whether in compilation or otherwise in any document referred to or created in connection with the transactions contemplated by these Terms are subject to correction without prejudice to Fonterra.
- 12.16 All variations to these Terms must be agreed, set out in writing and signed on behalf of both parties before they take effect. Fonterra may, from time to time, implement changes to these Terms without notice, provided that such changes do not apply to any agreement for the supply of goods entered prior to the date of the change (unless Fonterra and the Buyer agree otherwise in writing).