



TERMS AND CONDITIONS OF SUPPLY

Lactanol Limited

1. APPLICATION OF THESE TERMS

- 1.1 These terms and conditions of supply ("**Terms**") apply to the supply of all products to the Purchaser (as detailed in the product contract confirmation, and which includes any agent contractor or representative of the Purchaser) by Lactanol Limited ("**Lactanol**").

2. QUOTATIONS AND REQUESTS FOR SUPPLY

- 2.1 Lactanol may amend or withdraw price lists or quotations at any time. All price lists, quotations and proposals are subject to these Terms. Any price list, quotation or proposal given by Lactanol does not constitute an offer (capable of acceptance) or an agreement by Lactanol to supply the products to the Purchaser. Any request for products by the Purchaser ("**order**") is an offer to purchase the relevant products subject to these Terms and Lactanol may accept or reject any such request. An order placed electronically is binding on the Purchaser without confirmation from Lactanol being required.

3. CONTRACT CONFIRMATION

- 3.1 An agreement for the sale of products on these Terms will be formed once Lactanol confirms (whether verbally or in writing) its agreement to sell the Purchaser those products ("**contract confirmation**"), or on the delivery of the products to the Purchaser. These Terms apply to all deliveries of products pursuant to a contract confirmation and associated agreed delivery schedule ("**delivery schedule**") Lactanol is entitled to invoice the Purchaser for all of the relevant products in accordance with clause 8, irrespective of whether the Purchaser subsequently submits shipping/delivery requests, purchase orders or similar requests in respect of those products.
- 3.2 Changes or additions of an order are only binding on Lactanol if confirmed by a contract confirmation. Lactanol may increase or decrease quantities of product agreed upon in the contract confirmation in connection with (i) standard packaging, (ii) minimum quantities or (iii) damages during loading, and Purchaser must buy and pay the quantity as delivered.

4. DELIVERY

- 4.1 Delivery occurs when the products are loaded at our premises for delivery to you, unless Lactanol agree that delivery will occur at some other point.
- 4.2 If the Purchaser requests Lactanol to move an order out or bring it forward, or the Purchaser is otherwise delayed in taking delivery of the product as agreed in the contract confirmation and/or delivery schedule, Lactanol may recover from the Purchaser an administration fee, financial hedging costs/fees, product storage, logistics and any related holding costs resulting from such change in delivery or delay. If the Purchaser is unable to take delivery of the product as agreed in the contract confirmation, Lactanol may cancel the applicable shipment and any subsequent shipments without resulting liability. Lactanol may then resell the products to a third party, and the Purchaser shall indemnify Lactanol for any loss or costs (including any product write-off costs) for any storage, disposal, write-down, transport, logistics and any other costs incurred by Lactanol.

5. DEFECTS AND ACCEPTANCE

- 5.1 The Purchaser must notify Lactanol in writing within 10 working days of delivery of the product if there is any apparent physical damage or defect or a purported shortfall in volume of product so delivered.
- 5.2 Except where contrary to legal requirements, the Purchaser shall notify Lactanol in advance of the Purchaser making any notification to any government agency arising from or relating to any product (defective or otherwise). Lactanol shall not be liable for any defect in, or damage to, products (including that relating to the inappropriate storage, use or care of the products) or their packaging to the extent the Purchaser has done, or failed to do, anything that has caused or contributed to the claimed defect

or damage, or if the claim is outside the product warranty period. The Purchaser must not settle or compromise a claim by a third party concerning such products without Lactanol's prior written consent.

6. RISK AND TITLE

6.1 Risk in all products passes to the Purchaser on delivery even though title may not. Title in all products remains with Lactanol until such time as full payment is made in cleared funds for all amounts owing by the Purchaser for the products supplied. Until the Purchaser has paid Lactanol in full, Lactanol may retake, sell or dispose of the Product supplied and unpaid, which shall not affect any other rights Lactanol may have in connection with Purchaser's failure to perform.

6.2 Until payment has been received the Purchaser hereby grants to Lactanol a security interest in each and every part of the products (including any of the Purchaser's products incorporating the products supplied by Lactanol) and any proceeds thereof, for any amounts owing by the Purchaser to Lactanol from time to time.

6.3 The Purchaser:

- (a) must, upon request, promptly give us all assistance and information as is necessary to register a financing statement under the Personal Property Security Act 1999 ("**PPSA**") in respect of the products;
- (b) agrees to us registering a financing statement to protect Lactanol's security interest under these Terms;
- (c) must pay to Lactanol promptly on request the cost of registering the financing statement, and the costs of enforcing or attempting to enforce the contract evidenced by these Terms and the security interest granted under clause 6.3; and
- (d) agree that sections 114(a), 121, 131 of the PPSA will not apply to the security interests created by these Terms, and the Purchaser waives its right to receive a verification statement under section 148 of the PPSA.

6.4 At any time after a default occurs under these Terms, Lactanol may (whether or not Lactanol has exercised any other right) appoint any person to be a receiver of all or any of the products. In addition to, and without limiting or affecting, any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the products as if the receiver has absolute ownership of the products.

7. PRICE AND TAXES

7.1 Unless otherwise agreed in writing, the price for the products is as set out in the contract confirmation and/or the shipment schedule. The price may include any additional amounts for any incidental services as set out in the contract confirmation and/or shipment schedule (or any other customer-initiated changes to the contracted delivery schedule).

7.2 The price shall exclude applicable sales taxes, customs, excise, duties, levies, value added or goods and services related tax. The price shall be increased to reflect any such costs being imposed on Lactanol and the Purchaser shall hold Lactanol harmless in respect of any such costs.

8. PAYMENT AND INVOICING

8.1 *Domestic Sales* In the case of domestic orders where the products are not being exported, unless Lactanol has accepted a credit application from you and determined payment terms, the Purchaser must three days before shipment of domestic orders, pay the price and any other charges in cash as a prepayment and we are not obliged to deliver the products until we have received payment as cleared funds into our account. If Lactanol has granted the Purchaser credit, payment will be made in cleared funds to our account (details of which will be written on the invoice) on the 20th of the month following invoice date, in full, without deduction, set-off or counterclaim. Credit will not exceed the amount of payment owing.

8.2 *Products to be exported* If products are to be exported, unless Lactanol has accepted a credit application from the Purchaser, and determined payment terms, the Purchaser must pre-pay the price and any other charges in cash, and Lactanol is not obliged to deliver the products from a New Zealand port for export, until we have received payment as cleared funds into our account at least 14 days before the intended departure date (details on the invoice). If Lactanol has granted the Purchaser credit, payment will be made in cleared funds to our account (details of which will be written on the invoice)

30 days after invoice date, in full, without deduction, set-off or counterclaim. Credit will not exceed the amount of payment owing.

- 8.3 Any payments made pursuant to any such arrangement shall be made net of any bank charges and must equate to the amount invoiced for the applicable products. Any supply delays and associated costs incurred due to a delay in any payment being received by Lactanol are the Purchaser's responsibility
- 8.4 On notice to the Purchaser in respect of its initial credit application or in respect of any future order or orders, Lactanol may require the Purchaser to give a personal guarantee in respect of the Purchaser's payment obligations under these Terms as part of the credit application.
- 8.5 If the Purchaser is required by law to make any deduction or withholding on account of tax from any sum payable to Lactanol, then the sum so payable will be increased to ensure that, after the making of such deduction or withholding, Lactanol receives a net sum equal to the sum that it would have received and so retained had no such deduction or withholding been made.
- 8.6 The Purchaser must notify Lactanol within 10 working days of receiving the invoice if the Purchaser believes that the invoice is not correct, including full details of the claimed error. The Purchaser must make payment of the undisputed amount due on any disputed invoice on the due date. Once the dispute is resolved, the Purchaser must pay the resolved amount due within 10 working days. Where an invoice remains unpaid (whether in whole or in part) after the due date, and the Purchaser has not notified Lactanol of any genuine and reasonable basis for non-payment, the parties agree that there is no discrepancy or error with respect to the invoice.
- 8.7 If an invoice remains unpaid after the due date for payment Lactanol 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 Lactanol in cleared funds. Lactanol may also recover any collection charges including legal expenses incurred by Lactanol in attempting to recover any overdue amount from the Purchaser with a minimum of 15% of the amounts due;
 - (b) withhold or defer any future shipment pending payment without liability to Lactanol; and/or
 - (c) use applicable remedies (other than arbitration referred to in clause 12.8) such as obtaining judgment in the New Zealand courts.
- 8.8 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 Purchaser is in breach of these Terms, or defaults, or in Lactanol's reasonable opinion, is likely to default, in any payment due to Lactanol, or where a liquidator, receiver, controller, trustee or other insolvency administrator is appointed, or any similar situation occurs in respect of the Purchaser or any of its assets, Lactanol may:
- (a) withhold or cancel the relevant shipment and/or any subsequent shipment; and/or
 - (b) retain any deposit the Purchaser may have paid and/or draw on any relevant L/C, bank guarantee or standby L/C; and/or
 - (c) reclaim and/or resell the products in the Purchaser's possession or under its control and may enter premises where Lactanol believes that the products are stored or held to do so, and recover from the Purchaser all costs of doing so; and/or
 - (d) cancel the applicable product supply contract,

and all monies owing and outstanding by the Purchaser on any account whatsoever will become immediately due and payable (without the requirement for notice from Lactanol). Lactanol will not be liable to the Purchaser for any losses it incurs as the result of exercising the above rights.

10. WARRANTIES

- 10.1 Lactanol warrant that the products supplied are of merchantability quality and free from defects except for defects that Lactanol has disclosed to the Purchaser. To the maximum extent permitted by law, Lactanol makes no other representations or warranties in respect of the products, including representations or warranties concerning fitness for purpose, compliance with any laws, regulations or rules of any market in which the products are used, sold or otherwise dealt with, or appropriateness for the Purchaser's needs of any product, and the Purchaser must assure itself of these matters.
- 10.2 Lactanol may from time to time provide advice, recommendations and statements with respect to the products. However, Lactanol does not warrant or guarantee the accuracy or completeness of that advice, recommendations or statements or the results obtained through the use of the products. Lactanol expressly disclaims any liability for any damage to the Purchaser from reliance on such advice, recommendations or statements, which shall be at the Purchaser's own risk having made its own appropriate enquiries. Any sample, description or visual representation or details of product provided to the Purchaser are representative only and the actual product supplied may differ.

11. LIMITATION OF LIABILITY

- 11.1 Lactanol will 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 Lactanol within 30 days of the Purchaser first becoming aware of a claim arising.
- 11.2 Notwithstanding any other provision of these Terms, Lactanol will not be liable for any loss and/or damage to person or property, any loss of revenue, profits, goodwill, business or anticipated business, anticipated savings, any business interruption, loss of data, or product recall costs, or 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 Lactanol. Lactanol will not be liable for any loss and/or damage alleged to arise from the supply of goods for any special or particular purpose, and the parties by signing these Terms agree that no such purpose has been communicated to Lactanol and is expressly disclaimed.
- 11.3 If the products are delayed in being shipped to the Purchaser (or delivery made available) due to circumstances within Lactanol's reasonable control, Lactanol's maximum aggregate liability for any direct costs incurred by the Purchaser 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 Purchaser's sole remedy in the event of delay.
- 11.4 If the products do not (i) comply with the agreed specifications or (ii) there is a total failure by Lactanol to supply the products (in each case for reasons which Lactanol is responsible), Lactanol may, following discussion with the Purchaser, refund all or part of the price of the products (to the extent payment has been made), or replace all (or the unrefunded) portion of the products. In addition to the this refund and/or replacement remedy (and subject at all times to clauses 11.1 and 11.2), where the Purchaser has incurred any direct costs or direct damages resulting from either (i) or (ii) above (in each case for reasons which, and to the extent, Lactanol is responsible), Lactanol'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 products or the products failed to be delivered.
- 11.5 Where the Purchaser contends that costs or damages arising from any third-party claim are Lactanol's liability (and as a precondition to Lactanol accepting any such liability), the Purchaser irrevocably grants Lactanol the sole control of the defence and all related settlement negotiations and other proceedings, and the Purchaser shall assist and co-operate with Lactanol as reasonably requested regarding any third-party claim in relation to the products.
- 11.6 The Purchaser shall indemnify Lactanol for any liability, costs, damages or claims suffered by Lactanol and caused directly or indirectly by the Purchaser's handling, storage, use or sale of the products, or by 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 the Purchaser.

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 Purchaser to Lactanol under these Terms in respect of any damage, defect or shortfall in the contracted volume of products, the Purchaser shall do so within the time period stated in these Terms or Lactanol shall not be liable in respect of any claim or potential claim. The Purchaser shall provide full details of the alleged problem with the products, and subsequently any other information reasonably requested by Lactanol.

- 12.2 The Purchaser agrees that any packaging accompanying the products which identifies the product as being manufactured or supplied by Lactanol 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 Lactanol can be made. Unless expressly otherwise agreed in writing, the Purchaser acknowledges and warrants that any products purchased under these Terms are purchased solely for its own use and that the Purchaser will not on-sell the products in any market.
- 12.3 Any confidential information or intellectual property provided by Lactanol in connection with the products, including any price list, the contract confirmation and shipment schedule, remains at all times Lactanol's confidential and proprietary information and may be used by the Purchaser solely to complete the relevant shipment and for no other purpose and must otherwise be kept in strict confidence by the Purchaser. The Purchaser agrees that damages are not an adequate remedy for any breach of this clause and that Lactanol may seek an injunction or other interim relief to protect its rights. Lactanol will hold in confidence any information which the Purchaser identifies in writing to Lactanol as being confidential.
- 12.4 All intellectual property which is owned by, or is proprietary to, or which is created as a result of or in connection with the provision of the products, shall remain owned exclusively by Lactanol. The Purchaser has no right or interest in or licence to use any of Lactanol's intellectual property (including trade marks) without Lactanol's prior written consent.
- 12.5 The Purchaser shall not give or make any undertaking, assertion or representation in relation to the Products without Lactanol'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 Lactanol and the Purchaser, whether made during negotiations between Lactanol and the Purchase or at any subsequent time. The Purchaser agrees that no proceedings may be brought against Lactanol for an order under section 43 of the New Zealand Fair Trading Act in relation to sections 9, 12A, 13 or 14(1) of that Act.
- 12.8 These Terms are governed by the laws of New Zealand to the exclusion of the law of any other country to the maximum extent permitted by law. Any dispute, difference or claim arising out of or in connection with a product supply contract or these Terms, if not resolved by any informal dispute mechanism agreed between the parties, will be referred to and finally resolved by arbitration in accordance with the New Zealand Arbitration Act 1996 and its amendments and the AMINZ Arbitration Rules current at the time arbitration is commenced. The place of arbitration will be Auckland.
- 12.9 Any personal information collected by the Purchaser or Lactanol in connection with these Terms must only be used or disclosed for the purposes of ensuring performance of these Terms and any future like arrangement. This may include disclosure within the parties' respective organisations and to other parties involved in performing these Terms. Lactanol and the Purchaser agree to comply with relevant privacy laws in respect of any personal information collected in connection with these Terms, any shipments and any future like 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 Purchaser may not assign or novate any or all of its rights or obligations under these Terms to a third party or purport to do so without Lactanol's prior written consent (which may be given or withheld in Lactanol's complete discretion).
- 12.12 In addition to Lactanol's rights under clause 4.5 of these Terms, and subject to Lactanol's right to recover costs under clause 4.6, neither Lactanol nor the Purchaser shall be 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 shall promptly notify the other party using the fastest 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. In the event 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.

Force Majeure Event means an event or circumstance beyond the reasonable control of the affected party, its suppliers or auxiliary persons, which hinders or prevents the performance of its obligations under these Terms and which 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.

- 12.13 The parties agree to take reasonable steps to mitigate any loss or damage that party may suffer under these Terms.
- 12.14 Clerical errors or omissions, whether in compilation or otherwise in any quotation, contract confirmation, shipment schedule, request for supply, acknowledgement, invoice or other such documentation, are subject to correction by Lactanol.
- 12.15 All variations to an agreement for the supply of products on these Terms must be agreed, set out in writing and signed on behalf of both parties before they take effect. Lactanol may, from time to time, implement changes to these Terms without notice, provided that such changes shall not apply to any agreement for the supply of products entered into prior to the date of the change (unless Lactanol and the Purchaser agree otherwise in writing).