

# FONTERRA (NEW ZEALAND) LTD - STANDARD TERMS AND CONDITIONS OF SUPPLY

The following terms and conditions, as amended from time to time, apply to any credit facilities provided by us and to all purchases of our Products unless otherwise agreed in writing.

## 1. Ownership

1.1 We will remain the owner of the Products you purchase from us until all sums you owe us, on any account, are paid in full (even if you incorporate the Products with other items).

## 2. Trade Marks and use of the Products

2.1 You acknowledge that we own the goodwill in our Trade Marks and other intellectual property in the Products and their packaging and that you will not:

- export to or use the Products in any market outside New Zealand or sell the Products to any third party who may do so;
- modify or alter in any way our Trade Marks or the Product packaging;
- re-package the Products using our Trade Marks or packaging;
- use any other intellectual property in connection with the Products.

## 3. Quotations and Orders

3.1 Quotations will lapse if you have not notified us of acceptance within 3 working days of receiving a quotation.

3.2 All Product orders must:

- be in writing, signed by you or on your behalf; and
- state a unique order number for each Product order made.

3.3 Once you have placed an order you may not cancel or alter that order without our written agreement.

3.4 We are under no obligation to accept all or any of your orders.

## 4. Payment

4.1 Unless we have accepted a credit application from you, you must pay the price (clause 6) and our other charges (clause 7) in cash, upon delivery ("payment") and we are not obliged to deliver the Products until we have received payment.

4.2 If we have granted you credit you will make payment in cleared funds to our account (details of which will be provided to you) on the 20<sup>th</sup> of the month following the date of invoice, in full, without deduction, set-off or counterclaim. Credit will not exceed the amount of payment owing.

4.3 On notice to you in respect of your initial credit application or in respect of any future order or orders, we may require you to give a personal guarantee in respect of your payment obligations under these terms and conditions as part of the credit application.

4.4 If you default in payment on the due date, all moneys due to us shall immediately become due and payable and we shall be entitled to charge interest on such outstanding monies at the base lending rate charged by our bank plus a margin of 5 percent per annum from the date payment is due until the date we receive payment.

4.5 We may deduct money that you owe to us from money that we owe to you.

## 5. Default

5.1 If a default event occurs then:

- we will be entitled to cancel all or part of your orders which have not been delivered in full;
- all amounts you owe us, whether due for payment or not, will be immediately due and payable;
- we may reclaim Products in your possession or control and dispose of them for our own benefit to a value equal to what you owe us and may enter the premises where we believe the Products are kept in order to do so;
- we may recover from you the cost of repossessing and disposing of the Products or attempting to do so;
- you shall indemnify us from all our costs and disbursements, including all legal and debt collection costs; and

(f) 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 5.

5.2 For the purposes of clause 5.1 a "default event" occurs if:

- a payment by you is overdue; or
- we reasonably believe that you are unlikely to be able to immediately pay any sums owing to us; or
- you exceed the credit limit we have allowed you.

## 6. Price

6.1 The price for the Products will be the price we agree with you by or at the date of the order or if no such agreement is made then the current wholesale price charged by us at the date of delivery.

## 7. Other Charges

7.1 You must pay all delivery, handling, packaging and insurance charges (if any) related to your order.

## 8. Tax and Duty

8.1 Prices quoted do not include GST or any other tax levy or duty associated with the Products or their supply, which you must pay in addition to the price.

## 9. Delivery and Risk

9.1 Delivery occurs when the Products are loaded at our premises for delivery to you, unless we agree that delivery will occur at some other point.

9.2 Risk in the Products will pass to you on delivery even though we may remain the owner of them.

## 10. Stockfood/Seconds

10.1 If the product is sold to you as stockfood/seconds you acknowledge that it is not fit for human consumption and is sold on the representation from you that it will only be used or on-sold exclusively for the purpose of feeding animals.

10.2 You will be liable to us for all loss or damage (including damage to reputation) that we or any Associate may suffer if you breach clause 10.1.

## 11. Invoice Queries

11.1 You must give us written notice within 14 days of receiving our invoice if you believe that the invoice is not correct (for any reason including shortage or defects).

11.2 Your notice must include full details of the error(s) claimed by you.

11.3 If you have not given us valid notice of the error(s) within the required time, you must treat our invoice as correct.

11.4 You must still make payment of the undisputed amount due on any disputed invoice on the due date.

11.5 Upon the dispute being resolved, you will immediately pay to us (within 3 working days) the amount due

## 12. Shortage and Proof of Delivery

12.1 If the Products have been delivered, claims for shortages must:

- be notified to us within 14 days after delivery; and
- include delivery documents recording the quantity of Products you claim to have been delivered and signed as correct by you or your authorised agents and us or our carrier.

12.2 Copies of the signed delivery documents must be given to us before any claim for shortage will be considered, otherwise you will be deemed to have accepted the Products delivered and we will not be liable to you for any shortage.

## 13. Indemnity

13.1 You must indemnify us against all damages, claims and losses (including costs) which we incur as a result of:

- your failing to comply with any of your obligations to us; or
- any act or omission by you or your staff or other persons employed or authorised by you.

## 14. Warranties

14.1 Subject to Clause 10, we warrant that the Products supplied are of merchantable quality and free from defects except for defects that we have disclosed to you before delivery.

14.2 Where you are buying product for the purposes of a business the Consumer Guarantees Act 1993 does not apply.

14.3 All other guarantees, warranties and representations in relation to the Products or their supply are excluded except to the extent that we cannot lawfully exclude them.

## 15. Limitation of Liability

15.1 Subject to clause 15.2, our liability to you is limited to the price paid by you for the particular Products supplied by us to which your claim relates, or direct damages, whichever is less.

15.2 Without limitation, we will not be liable to you for:

- delay in delivery;
- loss or damage to the Products while in transit; or
- loss caused by anything which is beyond our reasonable control;
- any loss of profits or indirect or consequential loss or damage however arising.

15.3 We may, at our option, either:

- replace defective Products; or
- refund the purchase price for those Products.

15.4 We are not required to accept responsibility for any defective Products if you have not:

- notified us of the defect as soon as you become aware of that defect; and
- included in your notice full details of the Products, the alleged defect, and all documents associated with your order and delivery; and
- assisted us in a full investigation of your claim.

15.5 This clause 15 will not apply to the extent that the law prohibits us from limiting our liability.

## 16. Waiver

16.1 If we delay or do not exercise any of our rights or remedies that will not be a waiver of the right or remedy.

16.2 Any waiver or consent we give you must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

## 17. Severability

17.1 If part of these terms and conditions is held to be invalid, illegal or unenforceable the remaining provisions will remain in full force and effect.

## 18. Governing Law

18.1 These terms and conditions will be governed by New Zealand law and you agree to submit to the exclusive jurisdiction of the New Zealand Courts.

18.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these terms and conditions.

## 19. No Assignment

19.1 You may not assign your rights and obligations under these terms and conditions.

## 20. Privacy Act 1993

20.1 You acknowledge that we may refuse to allow you credit if you do not authorise us to obtain all information we reasonably require to assess your credit worthiness from any third person, and authorise those persons to release that information to us.

20.2 We will only use your personal information for purposes relating to your dealings with us, including direct marketing. You authorise us to release your personal information to third parties for these purposes.

20.3 All of your personal information will be held by us at our business premises where it can be inspected and corrected by you.

## 21. Personal Property Securities Act 1999 ("PPSA")

21.1 Where we are giving you credit, without prejudice to clause 1.1 above, you agree to grant to us if we so require a security interest in all Products supplied by us to you from time to time as security for all amounts payable by you to us, including but not limited to amounts owed on account of Products supplied, and credit facilities provided, by us to you from time to time.

21.2 You:

- must, upon request, promptly give us all assistance and information as is necessary to register a financing statement under the PPSA in respect of the Products;
- agree to us registering a financing statement to protect our security interest under these terms and conditions;
- must pay to us 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 conditions and the security interest granted under clause 21.1;
- agree that sections 114(a), 121, 131 of the PPSA will not apply to the security interests created by these terms and conditions, and you waive your right to receive a verification statement under section 148 of the PPSA.

## 22. Interpretation

22.1 "Associate" means any person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of, Fonterra Co-operative Group Limited ("Fonterra") and for this purpose Fonterra is deemed to control another person if Fonterra possesses, directly or indirectly, the power to appoint a majority of the directors of the other person, or to otherwise direct or cause the direction of the management or policies of that person, whether through the ownership of voting securities, by contract or otherwise;

"You" and "your" means the purchaser of the Products from us. Where the purchaser is more than one person, these terms and conditions will bind those persons jointly and severally.

"We", "our" and "us" mean, collectively and individually, Fonterra (New Zealand) Ltd or its Associate which supplies the Products and includes where the context permits its officers, employees and persons authorised by it.

"Products" means products supplied by us and includes all services supplied by us and, where the context requires, the Product packaging.

"Trade Marks" means any trade names, trade marks or other proprietary marks owned or used by us and applied to the Products including their packaging.