

TERMS AND CONDITIONS

1. **Orders:** Orders for the purchase of Products are administered by Seller. Seller will receive orders by telephone, by mail, and by fax transmission between the hours of 8:00 a.m. and 5:00 p.m. Eastern Time, Monday through Friday except on holidays. Orders not received by 2:00 p.m., Eastern Time, are considered to be received on the following business day. Orders accepted by Seller will be confirmed by Seller within five (5) business days of receipt of order. For all ILH purchases (as defined below), Seller will confirm vessel details and expected arrival dates.

2. **Required Lead Times For ILHs:** An ILH is defined as a holder of a U.S. Department of Agriculture dairy tariff-rate quota license for current year. Both ILHs and non-ILHs are referred to herein as "Buyers." Orders from ILHs MUST be in writing and must be received no later than 2 p.m. Eastern Time, on the fifth (5) day of the month that is prior to the month of shipment from supplier, or, if the fifth day of the month falls on a Saturday, Sunday, or a public holiday of the United States, on the last business day prior to the fifth day of the month prior to the month of the shipment.

3. **Information To Be Provided With ILH Order:** The following information MUST be provided with each order placed by an ILH: (1) the quantity of Product requested; (2) the Product variety(ies); (3) the day and month of shipment; (4) the shipping term (either, "F.O.B., New Zealand," "C.I.F., U.S. Port," or "F.O.B., U.S. Bonded Warehouse"); (5) vessel preference; and (6) the postal address for documents. In addition, in the event that Seller is requested to prepare the entry documentation for the ILH, Buyer will provide Seller with the following information: (a) the Import Control Number; (b) the Import License Number; (c) the Entitlement against License; and (d) the IRS number. When Seller is requested to prepare the entry documentation (the "Documents"), copies of the Documents will be delivered to Buyer by courier service within eighteen (18) days after the "on board bill of lading date." The on board bill of lading date is the date that the Product was loaded onto the vessel at the port of exportation, as stated in the bill of lading for the shipment.

4. **ILH Amendments To Orders:** Seller will use its good faith efforts to comply with timely amendments to its orders up until the final closure of the vessel. However, any additional costs incurred in attempting to comply with such amendments, whether successful or not, will be charged to the Buyer requesting the amendment.

5. **ILH Duty:** It is the responsibility of the ILH Buyer to arrange for the payment of all Customs duties upon entry of the product into the commerce of the U.S. Seller publishes the value of the Freight and Insurance Deduction annually, and the current value of the Freight and Insurance Deduction can be obtained from Seller.

6. **Quotation & Prices:** Buyers who have entered into an annual agreement with Seller shall pay the price set forth in that agreement. For all other Buyers, prices are subject to change without notice and orders calling for future delivery will be billed according to the price in effect at the date and place of delivery.

7. **Taxes:** Prices exclude various jurisdictional taxes (federal, provincial, state, local) on various aspects of the manufacture and sale process. Wherever applicable, such taxes will be added to invoice as a separate charge. For ILH purchases, Buyer is responsible for Customs duties assessed on the Products.

8. **Receipt of Goods:** Except as provided below, Products will be deemed received by the Buyer when delivered to the Buyer at the agreed upon place of delivery, or if delivery has become commercially impractical for Seller, at a commercially reasonable substitute for that place, selected by Seller. Risk of loss transfers upon receipt of goods regardless of whether Buyer has accepted them. Where the contract requires or authorizes the Seller to ship the Products by carrier, the Buyer will be deemed to have received the Products when the Products are delivered to the carrier. Buyer's failure to communicate rejection within seven (7) days of receipt of goods shall be deemed acceptance. Buyer's action that is inconsistent with Seller's ownership shall also be deemed acceptance. No Products may be returned for credit without Seller's prior written approval. Seller reserves the right to refuse or accept unauthorized returns and, in the latter case, the shipment will be held as Buyer's property and Seller shall have no responsibility for it.

9. **Delays, Delivery:** Seller shall not be liable for loss or damage of any kind resulting in whole or in part from delay or inability to deliver on account of delays in transportation, delays in delivery, any "Force Majeure" (as that term is defined herein) acts of any government agency or subdivision thereof, including any Customs agency or judicial action, shortages of labor or raw materials, or any other occurrence outside Seller's control. In the event of inability to deliver as a result of occurrences beyond

Seller's control, Seller may allocate available goods among buyers. In the event of inability to deliver due to occurrences beyond Seller's control, Seller will promptly notify Buyer of new estimated delivery date. Seller shall have the additional right in the event of the happening of any of the above contingencies, at its option, to cancel this sale or any part thereof without any resulting liability. Shipments made within 20 days after specified date of delivery shall constitute a timely delivery. Seller is entitled to ship in installments. Time is not of the essence of the contract. Buyer may not change delivery dates without Seller's approval. Buyer shall pay for any and all delivered products not in dispute, without any right of offset relating to other delivered or undelivered products or orders.

10. **Force Majeure:** The Seller shall not be liable for any delay in meeting, or failure to meet, its obligations resulting from any cause beyond its control including, without limitation: acts of God, accidents, fire, explosion, flood, storm, unusually severe weather conditions, labor disputes, including strikes, work stoppages, or industrial disputes, sabotage, insurrection, riots or civil disturbances, acts of government, acts of civil or military authorities, failure of essential services, including, but not limited to, power, telecommunication, water and any other infrastructure services ("Force Majeure"). The Seller shall, if practicable, give to the customer immediate notice of any such cause and shall resume performance of its obligations as soon as the cause ceases to affect the performance of its obligations.

11. **Compliance:** Seller will have the right to make substitutions and modifications in the specifications of Products, provided such substitutions or modifications do not materially affect form, fit or function of the Products. Orders will be considered complete upon shipment of a reasonable quantity over or under the amount specified in the order when it is impractical to produce the exact quantity ordered.

12. **Warranties:** Seller warrants that all Products shipped or delivered to Buyer, as of the date of such shipment or delivery, are not adulterated, or misbranded under the terms of the Federal Food, Drug and Cosmetic Act, as amended or under any other applicable law and that the Products conform to quantity, quality and description with the particulars stated in the applicable acknowledgment or purchase order. Seller's liability for defect of the Products will cease when the Products are incorporated in or mixed with any other Products, or used in any process. EXCEPT AS PROVIDED ABOVE, THERE ARE NO WARRANTIES OR GUARANTEES EXPRESSED OR IMPLIED ARISING FROM ANY NEGOTIATIONS, CORRESPONDENCE OR STATUTE CONCERNING QUALITY, DESCRIPTION, MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHERWISE, FOR THE PRODUCTS. Seller or its agents may from time to time provide recommendations, advice and statements with respect to the Products which are believed to be reliable. However, Seller does not guarantee its advice, recommendations or statements or the results obtained through the use of its Products, and expressly disclaims any liability for any damage to the Buyer from reliance on such advice, recommendations or statements. Such advice, recommendations or statements are relied upon at Buyer's own risk.

13. **Limitations of Remedies/Liability:** Seller assumes no responsibility for any effects, risks, or liabilities, which may result from the possession or use of its Products by the Buyer. Should any of Seller's Products prove defective due to faults in manufacture, or fail to meet the written specifications provided by Seller, the Buyer shall immediately notify Seller with all particulars in support of its claim, and Seller will either (1) replace goods upon return of defective or unsatisfactory material or (2) give the Buyer credit for defective or unsatisfactory material. THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT WILL SELLER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), OR EXEMPLARY OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, OR ANY OTHER LEGAL THEORY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE AGGREGATE LIABILITY THAT SELLER OR ITS REPRESENTATIVES MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY BUYER, AS APPLICABLE, FOR THE PRODUCTS THAT DIRECTLY CAUSED THE DAMAGE.

14. **Claims:** Claims for defective products, shortages, delays, or failures in shipment or delivery, or for any other cause, shall be deemed waived and released by the Buyer, unless received by Seller in writing within seven (7) business days after delivery of the Products.

15. **Right to Possession/Additional Remedies:** Seller shall have the right, in addition to all others it may possess at any time, for credit reasons, as determined in Seller's sole discretion, or because of Buyer's default or defaults, to refuse orders, suspend credit, accelerate payment due dates, retain possession of Products in Seller's possession, cancel unfilled orders, withhold shipments, in whole or in part, recall goods in transit, retake same, and repossess all goods which may be stored with Seller for

the Buyer's account, without the necessity of taking any other proceedings, and Buyer consents that all the merchandise so recalled, retaken, or repossessed shall become the absolute property of Seller provided that the Buyer is given full credit therefore. If payment of Seller's invoice(s) for shipments in part or in whole is not made promptly as provided in this contract, Seller will have the right to withhold further shipments and/or stop production and, at Seller's option, to require full or partial payment for the Product. The foregoing shall not be construed as limiting in any manner, any of the rights or remedies available to Seller by law because of any default of the Buyer. The foregoing rights of Seller are in addition to, and distinct from, the remedies available to Seller to reclaim goods based on the insolvency or a misrepresentation of solvency on the part of Buyer. Seller will be entitled to all incidental damages including but not limited to all commercially reasonable charges incurred (1) in stopping delivery under the conditions of this provision or the Uniform Commercial Code, (2) storing the Products after a breach by the Buyer, and (3) in connection with the return or resales of the Products, as well as any other damages resulting from Buyer's breach. Where the Products are to be supplied or payment thereof is to be made in installments, the failure of Buyer to pay any installment in due time will entitle Seller, at Seller's option, to treat such failure as a repudiation of the whole contract by Buyer and to recover damages for such breach of contract. If, at Buyer's request, or for any other reason for which Buyer is responsible, production or shipment is delayed, Seller will have the right to immediately invoice Buyer for work done, products produced and costs and expenses incurred up to the time of the delay. Should Buyer release the hold or remove the cause for delay and Seller agrees to reinstate the order, the new schedule of delivery will be set by Seller in accordance with the requirements of Seller's then existing factory schedule. If at any time prior to the date of initial production and/or shipment or at any subsequent time, there is filed by or against Buyer in any court, a petition for bankruptcy or insolvency, or for reorganization, or for the appointment of receiver or trustee of all or portion of Buyer's property, or if the Buyer makes an assignment for the benefit of creditors, this contract will, at the sole option of Seller, be subject to cancellation. If Seller elects to reinstate the order, such order will be subject to these Terms and Conditions of Trade and the schedule and rate of delivery will be set by Seller in accordance with the requirements of Seller in its sole discretion. If any suit is brought to collect any amounts owed by Buyer, Seller will be entitled to recover its costs and attorney's fees incurred in connection with collecting such amounts owed. All of the foregoing remedies are in addition to any that may be available under applicable law and are cumulative and not alternative.

16. Payment Terms/Credit/Collections: The amount of credit or terms of payment may be changed or credit withdrawn by Seller at any time. If goods are delivered in installments, Buyer will pay for each installment in accordance with the terms of payment of this contract. Payment will be made for the Products without regard to whether Buyer may make any inspection of the goods. If shipments are delayed by Buyer, payments are due from the date when Seller is prepared to make shipments. Invoices for all shipments are payable in United States funds. Payments will be made without any deduction or offset by reason of any alleged counterclaim or otherwise. Interest will be charged on all payments not made in accordance with the terms on the face sheet of the sales contract. The rate of such interest shall be the lesser of 1.5% per month (18% per annum) or the maximum rate permitted by applicable law. Interest will be charged from the payment due date through the date payment is received, including the time before and after any judgment entered thereon. BUYER HEREBY GRANTS, AND SELLER RESERVES, A PURCHASE MONEY SECURITY INTEREST IN EACH PRODUCT PURCHASED PURSUANT TO THIS CONTRACT, AND IN ANY PROCEEDS THEREOF, FOR THE AMOUNT OF THE PURCHASE PRICE. Upon request by Seller, Buyer will sign any necessary documents required to perfect such security interest. In addition to any lien to which it may be entitled by law, Seller will be entitled to a general lien on all Products of Buyer in Seller's possession (although such Products or some of them may have been paid for) for all sums, whether liquidated or quantified or not, due from Buyer to Seller. Seller will not be liable for loss or damage to Buyer's property in Seller's possession either as a result of the exercise by Seller of its lien or otherwise. Without limiting the generality of the foregoing, Buyer's failure to pay any invoice at its maturity date will make all subsequent invoices immediately due and payable irrespective of the due date set forth in such invoices. Upon such failure, Seller may thereafter require that Buyer make payment before shipment is made from Seller or at such other time as Seller may specify, or Seller at its option may cancel the unfilled portion of any or all orders and withdraw all unaccepted quotations. Seller's last written invoice, change order or statement of account will constitute presumptive evidence of all goods accepted by Buyer and all amounts due and owing from Buyer unless disputed by Buyer in writing within ten (10) business days of Seller's mailing or

transmittal to Buyer of such invoice, change order or statement of account. If Buyer fails to pay any amounts due, Buyer agrees to pay all cost and expenses of collection and/or repossession including all attorneys' fees incurred up to the maximum permitted by applicable state law.

17. **Severability:** If any provision of this contract is held to be unconscionable, invalid, illegal or unenforceable, by any court of competent jurisdiction, the provision shall be deleted from this contract. The balance of this contract shall be binding on the parties as though the clause deleted had never been a part of this contract.

18. **Governing Law/Attorney's Fees:** This agreement will be deemed to have been made under, and will, in all respects, be interpreted, enforced and governed by and under the laws of the State of Illinois, without giving effect to its conflicts of law principles. If any litigation is commenced between the parties hereto or their personal representatives concerning any party or parties, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted, to a reasonable sum for its attorney's fees. The amount of the attorney's fees awarded shall be determined by the arbitrator or court in such litigation or in a separate action brought for that purpose.

19. **Limitation of Actions:** Any action arising in whole or in part from these terms and conditions or from the Fonterra Foodservices (USA) Inc. Pricing Policy incorporated herein by reference, must be commenced within one year after the cause of action accrues. For purposes of this agreement, a cause of action accrues when the breach occurs, regardless of the non-breaching party's lack of knowledge of the breach.

20. **Controlling Provisions and Integration Clause:** All orders for Seller's Products placed by the Buyer will be subject to these Terms and Conditions of Trade which will become effective upon the execution of Seller's acknowledgment form by Seller's authorized representative. SELLER OBJECTS TO, AND IS NOT BOUND BY, ANY TERMS OR CONDITIONS ON BUYER'S PURCHASE ORDERS THAT ATTEMPT TO IMPOSE UPON SELLER ANY TERMS OR CONDITIONS AT VARIANCE WITH SELLER'S TERMS AND CONDITIONS AS SET FORTH HEREIN. ACCEPTANCE BY BUYER IS LIMITED TO SELLER'S TERMS AND CONDITIONS OF TRADE. THESE TERMS AND CONDITIONS OF TRADE ARE DEEMED TO BE A COUNTER OFFER AND ANY CONTRACT FORMATION BETWEEN SELLER AND BUYER IS HEREBY EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THESE TERMS AND CONDITIONS OF TRADE. ACCEPTANCE BY BUYER OF ANY PART OF THE PRODUCTS THAT ARE SUBJECT TO THESE TERMS AND CONDITIONS ALSO CONSTITUTES ASSENT TO APPLICATION OF THESE TERMS AND CONDITIONS OF TRADE WITH RESPECT TO ANY OTHER PRODUCTS ORDERED BY BUYER IN THE PAST OR FUTURE. The terms of this contract are intended by the parties as a final expression of their agreement with respect to such terms and also as a complete and exclusive statement of such terms.

21. **Alteration of Terms & Conditions:** No waiver, alteration, or modification of the foregoing terms and conditions shall be valid unless made in writing and signed by an authorized representative of Seller. Commencement of performance prior to compliance with the preceding sentence shall not be construed as a waiver hereof. No waiver, alteration, or modification shall be considered as a continuing waiver, alteration or modification of these terms in subsequent transactions. The signing by Seller of any of Buyer's documentation will not imply any modification of these terms unless specific written reference by Seller is made thereto. The Seller reserves the right to review and alter the foregoing terms at any point. The Buyer will be notified of any alterations to the Terms & Conditions as such terms and conditions are printed on the back of each sales confirmation and invoice.

22. **Assignment:** Buyer will not assign any benefit under this contract without Seller's prior written consent, which may, if given, be on such terms as Seller deems to be appropriate.

23. **Arbitration:** All disputes, controversies, or claims arising out of, relating to, or in connection with, this contract, including the determination of the scope of the agreement to arbitrate, will be finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), applicable at the time of submission of the dispute to arbitration. The American Arbitration Association ("AAA") will be the Appointing Authority and will appoint a single arbitrator. The arbitration case will be administered by the AAA in accordance with its Procedures for Cases under the UNCITRAL Arbitration Rules ("Rules"). The arbitration will be held in Cook County, Illinois and the exclusive language to be used for the arbitral proceedings will be English. Each party will bear its own cost. Nothing herein will prevent a party, prior to appointment of the arbitrator, from making application to any court of competent jurisdiction for any provisional remedy available at

law, or in equity. Such application for relief will not constitute a waiver of this agreement to arbitrate. Upon appointment, the arbitrator will have exclusive authority to order provisional or interim relief, except that any relief ordered by the arbitrator may be immediately and specifically enforced by a court otherwise having jurisdiction. The parties waive objection to venue and consent to the personal jurisdiction in the United States District Court for the Northern District of Illinois in any action to enforce this agreement to arbitrate or any order or award of the arbitrator, or for the provisional or interim remedies provided for herein. Discovery in any arbitration proceeding will be limited to written requests for the production of specific documents. The period for requesting documents will be sixty (60) days commencing upon the day that the answer is due under the Rules. The responding party will have thirty (30) days to produce the requested documents by sending copies to the requesting party or its representative via a recognized international courier service. The parties will also voluntarily produce all documents that they intend to use at the arbitration hearing, and a list of intended witnesses, before the close of discovery, subject to supplementation for purposes of rebuttal or for good cause shown. The parties hereby waive any right to seek any discovery not provided for in this contract irrespective of whether the laws of any country provide for different or additional discovery in international arbitration. The arbitrator will hold a pre-hearing conference within three days of the close of any discovery conducted and will schedule and hold the final hearing within thirty (30) days of the close of discovery. EACH PARTY HERETO HEREBY AGREES THAT THE ARBITRATION PROCEDURE PROVIDED HEREIN WILL BE THE SOLE AND EXCLUSIVE METHOD OF RESOLVING ANY OF THE AFORESAID DISPUTES, CONTROVERSIES, OR CLAIMS.

24. **NOTICES:** Any notice or communication provided for pursuant to this contract will be in writing and will be deemed given and received (a) upon delivery, if personally delivered or by facsimile transmission with receipt acknowledged, (b) one (1) business day after having been deposited for overnight delivery with Federal Express or a comparable overnight courier or (c) three (3) business days after deposit in the U.S. mail when sent by registered or certified mail, postage prepaid, with proof of delivery to the address of the party shown on the face of this contract or such other address as a party may specify in a written notice to the other.

02/26/04