

## GENERAL TERMS

The following terms and conditions ("**Terms**"), as amended from time to time, apply to any provision or supply of Products by us to you, unless otherwise agreed in writing.

### 1. DEFINITIONS

#### 1.1 In these Terms:

*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 and for this purpose Fonterra Co-operative Group Limited is deemed to control another person if Fonterra Co-operative Group Limited 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;

*Products* means any goods or products supplied by us to you (in accordance with our specification for such goods or products at the time of its manufacture or processing) in response to your order;

*we, our or us* means Fonterra Brands (Middle East) LLC, and any related company or Associate, from whom you receive Products and its officers, employees, agents, contractors and advisers;

*Trade Marks* means any and all trade marks owned by Fonterra and its Associates in respect of the Products; and

*you or your* means the purchaser or intending purchaser of the Products from us and includes any agent, contractor or representative of you (including your storage service provider, any carrier commissioned by you or anyone who transports the Products for you or on your behalf or processes or on-sells or on-provides goods or services incorporating the Products).

### 2. OWNERSHIP

2.1 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).

### 3. TRADE MARKS AND USE OF THE PRODUCTS

3.1 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:



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- (a) export to or use the Products in any market outside the territory in which the products have been delivered, or sell the Products to any third party who may do so without our prior written consent;
- (b) modify or alter in any way our Trade Marks or the Product packaging;
- (c) re-package the Products in their original composition using our Trade Marks or packaging;
- (d) use any other intellectual property in connection with the Products.

3.2 You must immediately report to us anything relating to these Terms (including any contact with any governmental or regulatory authority), which you reasonably believe may impact on the Products, your performance under these Terms or which may be significant, or have an impact on, our reputation, business or operations.

#### **4. QUOTATIONS AND ORDERS**

4.1 All Product orders must:

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

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

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

#### **5. PAYMENT**

5.1 Unless we have accepted a credit application from you, you must pay the price in advance, 14 days prior to estimated time of delivery and we are not obliged to deliver the Products until we have received payment.

5.2 If we have granted you credit you will make payment in cleared funds to our account on the due date of invoice, in full, without deduction, set-off or counterclaim.

5.3 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 guarantee, letter of credit, or standby letter of credit in respect of your payment obligations under these Terms as part of the credit application.

5.4 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.

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

#### **6. DEFAULT**

6.1 If a default event (as that term is defined below) occurs then:

- (a) we will be entitled to cancel all or part of your orders which have not been delivered in full;

- (b) all amounts you owe us, whether due for payment or not, will be immediately due and payable;
- (c) 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;
- (d) we may recover from you the cost of repossessing and disposing of the Products or attempting to do so;
- (e) 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 6.

6.2 For the purposes of clause 6.1 a “default event” occurs if:

- (a) a payment by you is overdue;
- (b) we reasonably believe that you are unlikely to be able to immediately pay any sums owing to us;
- (c) you exceed the credit limit we have allowed you; or
- (d) you breach any other term of these Terms.

## **7. PRICE**

7.1 The price for the Products will be the price we agree with you by or at the date of the invoice (which will be set out in our current price list or one off agreement). We may amend and or replace our price list from time to time at our sole discretion.

## **8. OTHER CHARGES**

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

## **9. TAX AND DUTY**

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

## **10. DELIVERY AND RISK**

10.1 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.

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

## **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:

- (a) be notified to us within 14 days after delivery; and
- (b) 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. WARRANTIES**

13.1 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.

13.2 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.

## **14. LIMITATION OF LIABILITY**

14.1 Subject to clause 14.2, 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.

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

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

14.3 We may, at our option, either:

- (a) replace defective Products; or
- (b) refund the purchase price for those Products.

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

- (a) notified us of the defect as soon as you become aware of that defect;

- (b) included in your notice full details of the Products, the alleged defect, and all documents associated with your order and delivery; and
- (c) assisted us in a full investigation of your claim.

## **15. HEALTH AND SAFETY**

15.1 You shall:

- (a) ensure that you, and all individuals who carry out work for you in any capacity under these Terms, comply with all health and safety legislation, regulations, applicable codes of practice and standards;
- (b) establish and implement a health and safety management system, which details how you will maintain a safe work environment, including with respect to your interaction with third parties (including us), and ensure legislative and best practice compliance;
- (c) when visiting any of our sites, participate in any site induction process and comply at all times with our health and safety requirements and any instructions provided to you from time to time; and
- (d) so far as is reasonably practicable, consult, co-operate with and co-ordinate your activities with us in connection with the Products.

## **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. SECURITY**

17.1 Where we are giving you credit, without prejudice to clause 2.1 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. To protect our security interest, you agree to allow us to register or otherwise perfect our security interest as permitted by law in any relevant jurisdiction should we so wish. On our request, you agree to promptly give us all assistance and information (including signing any documents) as we request to enable us to register or otherwise perfect our security interest with the priority we require.

## **18. USE OF YOUR INFORMATION**

18.1 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.

18.2 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.

**19. INFORMATION SYSTEMS INTEGRITY**

19.1 You acknowledge that we and our authorised agents may monitor, analyse and log all use of our systems and networks, including all data transmitted to and from our systems and networks and use of our websites, for the purpose of maintaining the integrity and security of our information systems.

**20. SEVERABILITY**

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

**21. GOVERNING LAW AND DISPUTES**

21.1 These Terms will be governed by the law of the United Arab Emirates.

21.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms.

**22. NO ASSIGNMENT**

22.1 You may not assign your rights and obligations under these Terms.