

## FONTERRA STANDARD TERMS OF PURCHASE

The following Fonterra Co-operative Group Limited Standard Terms of Purchase (“Terms of Purchase”), as amended from time to time, apply to all of our purchases of products and/or services from you unless otherwise agreed in writing. References in these Terms of Purchase to “you” or “your” refer to the Supplier and “us,” “we” or “our” refers to the Fonterra purchasing entity.

1. **Purchase of Products.** We shall purchase the products and/or services from you on the Terms of Purchase and on the terms (if any) set out in a purchase order placed by us on you for the supply of the products and/or services. The products and/or services shall be free from any liens, charges, security interests or any other encumbrances. You shall be responsible for payment of all freight, financing costs, customs and other charges, costs and expenses related to the supply and delivery of the products and/or services unless otherwise agreed in accordance with the delivery terms stated in the relevant purchase order. We shall pay the price for the products and/or services in accordance with clause 4.

2. **Approved Plant.** We have the right to approve in writing the plant, factory or other premises used by you in connection with the manufacture of the products (the “Plant”).

3. **Delivery of Products.** You shall supply the quantity of products in accordance with the delivery terms and on the delivery date(s) specified in the purchase order. We may refuse to accept delivery of any products or the provision of any services where there is no valid purchase order. You shall notify us as soon as practicable of any circumstances that may have a material effect on your ability to meet the specified delivery requirements or to supply the products and/or services in accordance with the Terms of Purchase and any purchase order.

4. **Payment.** We will pay for any products and/or services delivered in accordance with the delivery terms on the first working day two months from the first day of the month following the invoice date. The invoice should be received by us by the 15th of the month following supply of the products or provision of the services to which the invoice relates. Invoices must refer to the relevant purchase order number.

5. **Title and Risk.** Title to the products and all risk of loss or damage to the products shall pass from you to us upon delivery in accordance with the delivery terms contained in the purchase order or otherwise agreed with you. Where any payment of the price is earlier title passes when those products (or any component) are appropriated to the purchase order.

6. **Supplier Warranties.** You warrant that:

- (a) all products and/or services supplied by you shall comply with the specifications or requirements specified in the purchase order or as otherwise communicated to you;
- (b) all products and/or services shall be of merchantable quality and fit for the purpose for which they are intended or stated by us to you;
- (c) all products can be traced as to source and batch in the event of any recall issues arising and adequate product samples are kept and properly stored in accordance with good manufacturing practice;
- (d) you shall comply with all applicable laws, regulations, and carry out (and maintain all relevant correspondence, documents and records relating to) any necessary regulatory testing relating to manufacture, quality, storage, packing, transportation, export or sale of the products and/or services, or the performance of your obligations under these terms and conditions;
- (e) you shall (at your cost, and with reasonable assistance from us) be responsible for obtaining, and will provide us with, all necessary documents and other information required to ensure that the products are properly cleared for export and import to enable delivery, and that the products otherwise meet all relevant export, import and other legal and regulatory requirements (including those relating to consumer product safety), including those that we may have notified to you; and
- (f) the supply of the products or resale by us of the products shall not infringe the intellectual property of any third party.

These warranties are additional to any other warranties given by you or implied by custom or law, whether statutory or otherwise. You will, to the extent possible, pass on to us the benefit of any warranty received from any other person with the intent that we may have recourse against those persons either directly or through you.

7. **Required Information.** You will provide audit reports, manufacturing specifications, product analysis certificates and other testing certification and documentary records relevant to the Plant, the products and/or services and the manufacture and sale of the products and the provision of the services as reasonably requested by us from time to time.

8. **License to Intellectual Property.** You grant us a non-exclusive, non-transferable licence to use your intellectual property (including any trademarks or promotional material) in connection with the use, marketing and sale of the products and/or services by us.

9. **Defective Products.** We may carry out any reasonable acceptance tests of any product and/or

service. You shall take all necessary steps at your cost to rectify any failure of the products and/or services to meet the specifications or comply with these Terms of Purchase; and any other defect relating to the quality, safety or suitability for use of the products and/or services (each, a "Defect" or "Defective"). If you become aware that any products (whether delivered or not) and/or services are Defective, or do not otherwise meet the relevant specification or requirements of these Terms of Purchase, you shall immediately advise us in writing of all identified issues and their potential impact on us. Without limitation to any other provision, if any Defect which is a breach of warranty results in us not receiving the expected performance of value from the product and/or services, you will at your own cost, as requested by us, either:

- (a) promptly replace the product (with a full warranty) or re-perform the services; or
- (b) provide a full refund, in which case we may, at your risk and expense, return the product.

10. **Confidentiality.** All confidential information and any intellectual property provided by us to you shall remain our property, be kept confidential by you and shall be used by you solely for the provision of the products and/or services. All of our confidential information and intellectual property shall be returned to us following the expiry or termination of the purchase order.

11. **Indemnity.** Except to the extent that the liability results directly from any act or omission by us, you shall indemnify us and our employees, agents and contractors (each an "Indemnified Party") against all claims, expenses, losses, damages and costs of any kind whatsoever ("Liabilities") (including all Liabilities arising as a result of damage to a third party's property, injury to or death of any person, or any claim by any third party (including any subsequent purchaser of the products from us), all legal costs in relation to any Liabilities, and all product recall costs and regulatory fines and penalties) sustained or incurred by any such Indemnified Party arising from:

- (a) any breach of these Terms of Purchase by you;
- (b) any Defect;
- (c) any negligent or wrongful act or omission by you or any of your employees, agents or contractors in the course of or related to the performance of, or failure to perform, any of your obligations under these Terms of Purchase; or
- (d) any fraud, dishonesty, misrepresentation or wilful default by you.

12. **Insurance.** You shall take out and maintain public and product liability insurance cover of not less than the coverage amount specified in a purchase order or otherwise communicated to you by us from time to time in respect of any potential liability, loss or damage that may arise relating to the performance of your obligations under these Terms of Purchase with a reputable insurer who is satisfactory to us. You agree to provide evidence of such insurance to us upon request.

13. **Notices.** Any notice to be given under, or in connection with, these Terms of Purchase shall be given in writing to the other party's physical or contact email address and delivered by hand, prepaid post, sent by fax

(with the original following by post) or by email to the email address for the other party's contact person.

14. **Assignment.** You shall not assign or attempt to assign or otherwise transfer or subcontract any right or obligation in respect of the supply of the products and/or services pursuant to these Terms of Purchase.

15. **Governing Law.** These Terms of Purchase shall be governed by and interpreted in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand. The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to these Terms of Purchase.

16. **Relationship Between the Parties.** Nothing in these Terms of Purchase or any purchase order shall create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between us. Neither of us shall not have the authority to act for, or to incur any obligation on behalf of, the other party.

17. **Waivers; Modifications.** Any modification to or variation or waiver of these Terms of Purchase must be in writing and signed by the parties. No failure or delay by any party in exercising any rights, power or privilege under these Terms of Purchase shall operate as a waiver, nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege.

18. **Entire Agreement. Severability.** These Terms of Purchase and the terms contained in a purchase order (and any documents referenced in or forming part of the purchase order) constitutes the entire agreement and understanding between the parties and supersedes any previous written or oral agreement or understanding between the parties in relation to the supply of the products and/or services. If any of these Terms of Purchase is held to be invalid, illegal or unenforceable, it shall be severed and the remainder of these Terms of Purchase shall remain in full force and effect.

19. **Remedies; Set-Off.** All of our remedies contained in these Terms of Purchase shall be cumulative and in addition to any rights or remedies we may have under applicable law. We may set off any amount owed by you to us or any of our related companies or any other entity within the wider Fonterra group under these Terms of Purchase or any other agreement against any amount owed by us or our Affiliate to you under these Terms of Purchase or any other agreement.

20. **Survival.** The provisions of clauses 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 shall survive termination or expiry of the agreement to which these Terms of Purchase apply.