

FONTERRA BRANDS NEW ZEALAND STANDARD TERMS OF PURCHASE OF GOODS AND SERVICES

1. DEFINITIONS

1.1 The following definitions are used in these terms:

- (a) "You" and "your" means the supplier of the goods or services to us.
- (b) "We", "our" and "us" means the Fonterra Company or any Related Company that purchases the goods or services from you.
- (c) "Fonterra Company" means Fonterra Brands (New Zealand) Limited, Fonterra Brands (Tip Top) Limited and/or Fonterra Brands (The Pastryhouse) Limited.
- (d) "Related Company" means any company that, directly or indirectly, is controlled by a Fonterra Company.

2. TERMS APPLYING

2.1 These terms apply to all purchases of goods and/or services from you by us.

2.2 Any terms or conditions of supply on any invoice or other document provided by you will be of no effect and will not replace or vary any of these terms and conditions unless we agree in writing. Each purchase order for goods or services submitted by us incorporates, and is subject to, these terms notwithstanding anything to the contrary in any of your documentation.

3. YOUR OBLIGATIONS

3.1 You must supply the goods and/or services in accordance with the terms of the purchase order and these terms.

3.2 You must hold all consents, permits and licences necessary to provide the goods or perform the services.

3.3 Where the order includes provision of training or support and maintenance services you must promptly and/or at the correct intervals supply those services in accordance with best industry practice.

3.4 While on our sites, you, your employees, representatives and agents must at all times comply with:

- (a) our site rules and site access and security requirements;
- (b) the provision of any relevant legislation, codes or standards; and

(c) any other reasonable directions given by us.

4. DELIVERY AND ACCEPTANCE

4.1 Unless otherwise directed:

(a) you must deliver the goods to or provide the services at the address shown on the purchase order; and

(b) the goods will be sold Delivery Duty Paid (DDP Incoterms [2010]), unless otherwise specified in a purchase order.

4.2 We may specify additional or special requirements for the delivery of goods on the purchase order.

4.3 Where the purchase order includes any installation by you, you must promptly complete installation by the date set out in the purchase order or if no date is provided in accordance with best practice, at times reasonably approved by us and with minimum disruption.

4.4 We may inspect, test and observe at all reasonable times the supply of the goods or services. However, any such inspection does not relieve you from any subsequent responsibility of liability in respect of the goods and such inspection in no way implies that we accept the goods.

4.5 We may carry out any reasonable acceptance tests of any goods or services or any part thereof. If any goods or services fail any acceptance test you will at your cost immediately remedy any problem. You will assist us with testing as requested.

4.6 If you make part deliveries and/or fail to deliver the total quantities as stipulated on the relevant order we may cancel the entire order at no cost to ourselves and we may return any part deliveries to you at your cost.

4.7 You must notify us immediately if you become aware that the government or other authorities require you to recall any or all of the goods supplied by you to us. You must use reasonable endeavours to provide replacement goods to us as soon as possible. You must meet, on demand by us, any reasonable costs we incur in purchasing alternative products and we can recover such additional costs against you as a debt due to us.

4.8 Where a purchase order provides a time for delivery of the goods and/or services time is of the essence with respect to that delivery.

4.9 We may vary the delivery time and/or the delivery address at any time prior to delivery by providing you written notice of those changes.

4.10 Without prejudice to any of our other rights and remedies, we may charge storage and transportation expenses if you fail to deliver goods or services at the times specified in a purchase order or at such as time we deem acceptable for delivery. You will be liable for and agree to keep us harmless from and indemnify us against any loss, damage, injury, penalties, costs and expenses arising directly or indirectly from any delay in supply.

5. TITLE AND RISK

5.1 Title to any goods (including any parts or items supplied as part of a service) passes to us on delivery, but where we pay any part of the price before delivery then title passes on payment.

5.2 Risk remains with you until completion of delivery and acceptance of the goods by us.

5.3 The receipt or signature of a delivery order by one of our authorised officers is not acceptance of either the quality or quantity of the goods. Our acceptance of any goods will be subject to our inspection and subsequent use of the goods.

6. PRICING

6.1 The price is as set out in the purchase order (unless otherwise agreed in writing) and is the only amount we must pay. Unless otherwise stated in the purchase order the price is in New Zealand dollars and is inclusive of all taxes, including goods and services tax ("GST"), duties, fees or other government levies and charges.

6.2 Where you make a taxable supply (as that term is defined in the Goods and Services Tax Act 1985 ("GST Act")), payment by us will be subject to receipt from you of a valid tax invoice in accordance with the GST Act.

6.3 We will pay for the goods delivered or services provided in accordance with these 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 delivery of the goods or provision of the services to which the invoice relates. The unit of measure detailed on the purchase order must be the unit of measure you invoice us in. The tax invoice must quote the purchase order number and be sent to the address specified on the purchase order.

7. INTELLECTUAL PROPERTY

7.1 (a) Where any license or other authorisation from any person is required to own, possess, use or resell any good or any component you will, at no extra cost to us, procure an irrevocable and unrestricted licence on a non-exclusive and transferable basis for us to own, possess, use and resell the good.

(b) All proprietary rights in any intellectual property (including any design, data, specifications, know-how or any other form of intellectual property) that is specifically developed for us as part of the provision of any goods or service will become our property.

7.2 All confidential information and any intellectual property provided by us in connection with any purchase order remains at all times our confidential and proprietary information and shall be used solely to complete the relevant order and for no other purpose, other than where disclosure of such information is required by law. Any such information must be returned to us at any time on request.

8. WARRANTIES

8.1 You warrant to us that:

(a) each service will be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons and to the best industry standards and be fit for the expected purpose;

(b) each good (and its components) will:

(i) be fit for the expected use and purpose;

(ii) conform to the specification, design, quality, quantity, configuration, description and samples agreed and approved by us (if any);

(iii) be new and unused on delivery, and if a shelf/calendar life or utilisation life is applicable, at least 95% of such life remains on delivery;

(iv) not be subject to any mortgage, charge, lien, encumbrance or retention of title;

(v) be free from any defect (including any latent defect) in design, materials and workmanship and not emit any contaminant or hazardous substance;

(c) our ownership, possession, use or resale of any good or the use or result of a service supplied by you will not infringe any proprietary or other intellectual property right or interest of any person and you must provide within the price any licence or other authorisation from any person necessary in order for us to obtain the full benefit and use of the goods or service.

(d) all goods supplied and/or services provided will comply with all applicable laws or regulations and you will, at your cost, hold and maintain in good standing all necessary licences, registrations, permits, authorisations, consents and approvals required by or from any governmental, provincial or local department or agency.

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

8.3 You will promptly remedy each warranty claim to our reasonable satisfaction. Warranties start again for the full period on completion of remedying each defect. Without limitation to any other provision of these terms, if any defect which is a breach of a warranty results in us not receiving the expected performance or value from the good then you will at your own cost promptly replace the good or goods (with a full warranty) if requested by us.

9. INDEMNITIES

9.1 You will indemnify and keep indemnified us, and our employees, agents and contractors ("Our Indemnified Parties") against all claims, expenses, losses, damages and costs ("Liabilities") (including all Liabilities arising as a result of damage to a third party's property or injury to or death of any person, and all legal costs in relation to any Liabilities) sustained or incurred by any of Our Indemnified Parties arising from:

(a) any breach of these terms by you;

(b) 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; or

(c) any fraud, dishonesty, misrepresentation or wilful default by you.

10. RIGHTS AND LIABILITIES

10.1 If you fail to comply with any obligation in these terms and fail to properly remedy the situation to our satisfaction within 5 working days after we notify you of the breach or failure, or if you are or become insolvent or bankrupt or go into receivership or liquidation or enter into any compromise with your creditors, then we may, without limitation to any other right or remedy under these terms or at law:

(a) cancel or suspend the purchase order or any uncompleted portion thereof;

(b) set off against any amount we owe you, any sum you owe us or that we are claiming from you in respect of these terms;

(c) recover from you any direct, indirect and consequential damage, loss or cost (including full legal costs) suffered by us.

10.2 Notwithstanding the cancellation of the purchase order or any uncompleted portion thereof, clauses 4 (Delivery and Acceptance), 7 (Intellectual Property), 8 (Warranties), 10 (Rights and Liabilities), and 11 (Miscellaneous) of these terms remain in full force and effect.

10.3 Except to the extent required by law, we have no liability whatsoever (including, but without limitation, in equity, contract or tort, including negligence) to you or any other person for any loss of profits, income or savings, or for indirect or consequential damage, loss, cost or expense suffered by you or any other person

10.4 Our liability to you (whether in contract or tort, including negligence) is limited to the price payable in respect of the relevant purchase order and we shall not be liable for any loss of profits, income or savings, or for indirect or consequential damage, loss, or cost.

11. MISCELLANEOUS

11.1 These terms may only be amended in writing signed by an authorised representative of each party.

11.2 If any amount is payable by you to us we are entitled to set that amount off against any amount payable by us to you.

11.3 You may not assign or sub-contract any of your rights and obligations in respect of a purchase order or these terms.

11.4 Nothing in these terms evidences any employment relationship, partnership, joint venture or agency.

11.5 Any unlawful provision in these terms will be severed and the remaining provisions will be enforceable.

11.6 Neither party is liable for any failure or delay in performing an obligation if due to a cause beyond the affected party's reasonable control. An affected party must notify the other party of the cause and likely delay as soon as practicable.

11.7 No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.

11.8 Nothing in these terms creates a security interest in any goods supplied to us in accordance with these terms.

11.9 We and you acknowledge and agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to the supply of goods under any purchase order and these terms.

11.10 These terms and conditions are governed by the laws of New Zealand and you agree to submit to the exclusive jurisdiction of the courts of New Zealand.