

**FONTERRA AUSTRALIA GROUP
TERMS AND CONDITIONS OF SALE WITHIN AUSTRALIA**

1. DEFINITIONS

1.1 In this document, comprising terms and conditions of sale (**Terms**):

we, our or us means the Fonterra Company(ies) from whom you receive Products and/or Services and its officers, employees, agents, contractors and advisers;

you or your means the purchaser or intending purchaser of the Products or Services from us and includes any agent, contractor or representative of you (including your storage service provider or anyone who processes or on-sells or on-provides goods or services incorporating the Products or Services);

Agreed Basis means for an order of Products and/or Services, accepted by us, that:

(i) at our nominated point of collection or delivery within Australia;

(ii) you must accept Delivery of the volume of Product referred to in your order, together with all related Services; and

(iii) you are liable for and must pay all taxes (including any sales, value added or like impositions), levies, duties or fees in respect of each Delivery, provided that GST will be payable as provided in these Terms.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Deliver means:

(a) to deliver Products other than LBP:

(i) if we are responsible to arrange delivery, by us making the Products available to be unloaded from transport arranged by us at the agreed destination, with risk passing when those Products are uplifted from that transport; or

(ii) if you are responsible to arrange collection, by us making the Products available for loading onto transport arranged by you at our nominated despatch point, with risk passing when those Products are uplifted to transport,

in either case as we notify you on acceptance of your relevant order; or

(b) to deliver LBP:

(i) in the case of a hose supplied by us for loading or unloading, by us making the LBP available to you, with risk passing when the LBP leaves the hose to enter your transport, silo, tank or other storage device; or

(ii) in the case of a hose supplied by you for loading or unloading, by us making the LBP available to you, with risk passing when the LBP enters the hose from our transport, silo, tank or other storage device; and

(c) for all Products, by us having completed the supply or performance of Services (as reasonably determined by us),

as appropriate, on the Agreed Basis – and related Services will be performed at the same time;

Fonterra Company means Fonterra Ingredients Australia Pty Ltd ABN 95 003 502 583 or Fonterra Milk Australia Pty Ltd ABN 12 114 326 448 or Fonterra Brands (Australia) Pty Ltd ABN 80 095 181 669 or ACN 008 668 602 Pty Ltd or Murrumbidgee Dairy Product Pty Ltd ABN 87 003 114 930 or Fonterra Australia Pty Ltd ABN 52 006 483 665 or Fonterra Investments Pty Ltd (trading as Fonterra Innovation) ABN 25 113 065 704;

GST, supply, tax invoice and taxable supply have the same meaning as in *A New Tax System (Goods and Services) Act 1999* (Cth);

law means, other than in clauses 7 or 9, any law, by-law, legislation, rule, standard, regulation, registration, code or relevant good industry practice applicable to goods and services equivalent to, or incorporating, the Products and/or Services;

LBP or Liquid Bulk Products means any liquid goods or liquid products supplied by us in bulk containers or transport vessels;

Pre Test means a test to confirm that any factor(s) agreed by you and us have been satisfied before Delivery;

Post Test means a test to confirm that any factor(s) agreed by you and us have been satisfied at or after Delivery;

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 and includes LBP;

Sales Tax means any tax or levy of a sales, value added or goods and service nature applicable to the sale and/or supply of any Product or Service from time to time under the law applicable to these Terms and includes stamp duty on these Terms or any transaction contemplated by them; and

Services means any services supplied or deemed to be supplied by us incidental to the Products.

1.2 These Terms apply to the provision or supply of all Products and/or Services by us to you under any order made by you and accepted by us. Subject to clauses 1.3, 1.4, 6.1, 11 and 12, these terms supersede and exclude all prior or subsequent discussions, representations, terms and/or conditions of trade, all prior written or oral agreements and understandings between us and you and any other terms and conditions which you seek to extend to the supply of Products and/or Services by us to you, whether by way of incorporation into your order or otherwise.

1.3 We can amend these Terms at any time by notice to you (including by reference to such amended terms being set out on our website) and the amended terms will apply in respect of all orders placed by you after you receive that notice. We can also terminate any and all rights (whether express or implied) that you may have or believe that you have to place further orders under these Terms without cause on five days notice to you or such lesser period as these Terms otherwise provide.

1.4 If there is a written agreement between you and us and there is any express inconsistency between that agreement and these Terms, the terms of that agreement apply to the extent of that inconsistency.

1.5 If any related body corporate, affiliate or associate of us, either within or outside Australia, is involved in the sale and/or Delivery of Products and/or Services to you, their acts are deemed to be ours and they benefit from these Terms as though they are us (and we hold these Terms on their behalf and may exercise them on their behalf). We are not obliged to tell you about any involvement by them. We also hold these Terms on behalf of our employees, agents, contractors and advisers and may exercise them on their behalf.

1.6 If we supply goods or products and/or perform services that are not Products or Services, as appropriate, to you or for your benefit and no written agreement or terms and conditions apply expressly to that supply and/or performance, then those goods are deemed to be Products and those services are deemed to be Services and their supply is governed by these Terms.

2. QUOTATIONS, DESCRIPTIONS AND PURCHASE ORDERS

2.1 None of our quotations constitute an agreement to supply, perform or Deliver the Products and/or Services referred to therein. We can amend or withdraw our quotations at any time. All our quotations are subject to these Terms. If you wish to purchase Products and/or Services referred to in our quotation, you must make an order within the specific period stated in that quotation. If the quotation is given without specifying a period within which you are to make an order, then the quotation lapses 48 hours after we send the quotation without the need for us to inform you.

2.2 All descriptive specifications, illustrations, qualities and data furnished by us or otherwise contained in catalogues or other advertising material are approximations only and are intended to be merely a general description of the Products and/or Services. They are not incorporated within these Terms or any agreement with you under these Terms and do not form part of the description of the Products and/or Services supplied and/or performed under any agreement between you and us unless expressly referred to therein.

2.3 We may from time to time provide advice, recommendations and statements with respect to the Products and/or Services. To the maximum extent permitted by law:

(a) we do not represent, warrant or guarantee the accuracy or completeness of such advice, recommendations and statements or the results obtained through the use of the Products or application of the Services;

(b) we expressly disclaim any liability for any damage to you from reliance on such advice, recommendations or statements;

(c) such advice, recommendations and statements must not be relied on by you and if you do so, it is at your own risk; and

(d) you should make other appropriate enquiries to verify any advice, recommendations and statements you rely on, having regard to your circumstances.

2.4 All samples, descriptions or visual representations, or details of a good or product provided by us to you (including with a quotation or through any catalogue we issue) are representative only and the actual Product Delivered may differ from such in a way that is not materially adverse to you, unless a specific quality is required by you and this has been advised to us in writing with the relevant order from you and accepted by us.

2.5 Your orders must be in writing with a full description of your requests for the Products and/or Services, the requested date and requested location for delivery, and must set out a unique order number that is acceptable to us. If you do not:

(a) nominate a location for delivery that we accept, the Agreed Basis will apply to your order; or

(b) request a date or period for delivery that we accept, we will Deliver within three months of the date we notify you of our acceptance of your order.

2.6 Each order by you is an offer to purchase Products and/or Services from us subject to these Terms. No order is binding on us unless and until we accept that order in writing. We need not accept any order.

2.7 We may accept your order in whole or in part and will advise where and when we intend that Delivery occur (in each case having regard to, but not being bound by, any requests set out in your order) and the applicable price. Our acceptance is based solely on the volumes you order (including any volume based discounts) and the extent to which we agree to accept such.

2.8 These Terms are not an express or implied offer by us to supply any good to, or perform any service for, you or at your direction.

2.9 Once received by us, your order cannot be cancelled without our written consent (even if we haven't accepted the order yet), and we may charge an administration fee or impose other obligations on you as a condition of us giving our consent.

2.10 If you request an amendment to, or cancellation of, your order after we have accepted it, we are not obliged to accept your request but if we do then we reserve the right to charge for any work in progress and expenditure incurred in connection with that order up to the time of our acceptance.

3. DELIVERY

3.1 Clause 3 does not exclude, restrict or modify the application of any provision, the exercise of any right, or the imposition of any liability under any statute to the extent that doing so would contravene that statute or cause any part of clause 3 to be void

3.2 In no circumstances do we Deliver on a consignment or similar basis. We will use all reasonable efforts to Deliver all Products and/or Services to you in accordance with clause 2.5 and 2.7 and in the minimum number of loads required to fulfil that Delivery. Dates or periods specified for Delivery are not of the essence. If Delivery as advised by us becomes commercially impractical for us (in our reasonable opinion) then we may Deliver the Products to a commercially reasonable substitute Delivery location and/or time selected by us and notified to you. We will not be liable for any loss or damage (including consequential, special, punitive, indirect or economic loss or damage, loss of contract, loss of production or from production stoppage, or loss of profit, revenue or opportunity) arising or resulting (directly or indirectly) from:

(a) a delay in Delivery where such delay is within our control and does not exceed 10 days or such other period as we expressly agree in writing with you;

(b) part or multiple Deliveries by us (or on our behalf) having occurred; or

(c) delay in, or failure to, Deliver due to circumstances beyond our reasonable control.

3.3 If you are unable to, or do not, accept Delivery as and where scheduled or arranged by us for any reason (including where you decline to accept all or any part of the Delivery or delay in doing so), we have complete discretion to resell or resupply the Products and/or Services that were not accepted by you to a third party and you will be liable for any loss incurred by us on that resale or resupply, and for all storage, Delivery and other logistics costs and any other costs incurred by us in doing so without affecting your obligation to pay for what you did accept. If any of the Products perish, become damaged or tainted, or are otherwise unsaleable (**Damaged Products**) as a direct or indirect consequence of you not accepting Delivery, you indemnify us and must keep us indemnified for all costs and expenses incurred by us in connection with the Damaged Products, including arranging for their transport and/or disposal.

3.4 You must check all Delivery volumes against the delivery documentation and:

(a) where credit terms apply, if you do not dispute it within two days, we are entitled to rely on that documentation in issuing any subsequent tax invoice; and

(b) where 'cash on delivery' applies, you are deemed to accept that volume is correct at the time of payment.

3.5 You must also inspect all Products other than LBP Delivered and advise us within two days of any claimed defects in respect of them, or other dispute with respect to them.

3.6 For each proposed Delivery of LBP, unless we expressly agree otherwise in writing in respect of that Delivery:

(a) before Delivery occurs, you must at your cost, obtain two separate samples of the LBP from the delivery vehicle or despatching facility and thereafter separately maintain those samples appropriately and conduct the Pre Test on one of them;

(b) except where clause 3.7 applies, you must at your cost convey to us the results of the Pre Test within 12 hours of its conduct;

(c) even if clause 3.7 applies, you must at your cost arrange for the testing (within 24 hours of the sample being taken) of one sample by a testing laboratory that has been approved by us in writing for the conduct of such testing;

(d) you must (at your cost) make available any sample for further testing where we request such (including if there is any dispute over the results of any testing that has been undertaken); and

(e) regardless of the outcome of the Pre Test, no later than 24 hours after Delivery, you must at your cost conduct the Post Test and convey to us the results within 12 hours of its conduct.

3.7 If you reasonably believe the LBP failed the Pre Test, you may reject that LBP and not accept Delivery of it provided that if you do so, you must provide the driver or representative of the despatching facility (as appropriate) with a copy of the test results. If you do not, you are deemed to have agreed that the LBP satisfied the Pre Test.

3.8 If LBP did not pass, and is not deemed to have passed, the Pre Test and the Post Test, as appropriate, clause 7 applies.

3.9 If you do not notify us of any dispute or defect within the relevant period set out in clauses 3.4 to 3.8, as appropriate, the relevant Products are deemed to have been Delivered by us and accepted by you in compliance with these Terms (including being deemed to have passed both the Pre Test and the Post Test) and any additional terms and conditions that you and we expressly agree apply to them.

3.10 Related Services are deemed to have been performed when the Products are Delivered (or deemed to be Delivered).

3.11 Unless otherwise directed by us in writing, any pallet, drum, container, bin or crate or other receptacle (**Receptacle**) used by us to facilitate Delivery is not sold to you and does not become your property and must either be returned to us at your cost or, if lost, damaged or not returned within seven days, replaced by you. If not, you indemnify us and must keep us indemnified for all of our resulting costs including charges or compensation we are required to pay to a third party in respect of the use, hire or replacement of the Receptacle. You must keep all Receptacles secure and in good condition in a manner consistent with applicable food and health requirements until the Receptacles are returned to, or collected by or on behalf of, us (in both cases at your cost).

4. RISK AND TITLE

4.1 Unless otherwise agreed by us in writing, risk in all Products and Services passes to you on Delivery even though title may not. You are solely responsible for the storage, insurance and application or on-sale of Products at and after Delivery.

4.2 Title in all Products remains with us until such time as full payment is made in clear funds for all amounts owing by you to us for all Products and Services Delivered by us from time to time or until you on-sell the Products in accordance with clause 4.6.

4.3 We may insure Products up to the time of Delivery or the passing of title to you, but you must not assume that we will take out or maintain any such insurance.

4.4 You acknowledge that until full payment for all Products and Services Delivered (together with any interest under these Terms) is made, you:

(a) hold all Products as our bailee and you further acknowledge that a fiduciary relationship exists between us and you for this purpose; and

(b) except in relation to Products that are incorporated, processed or comingled with other goods, must keep the Products stored separately from all other goods and keep the Products insured for replacement cost and identified (in a way that is obvious to others) as our property.

4.5 Until such time as title in the Products passes to you, we are entitled to require you at any time to deliver up the Products to us (or as we direct) and if you fail to immediately do so, we may enter any premises under the control of you or your agent where the Products are stored and repossess them. You must at all times ensure that all third party storage premises used to store your Products allow us to do this or to exercise rights under clause 6.4(c)(ii), even if the third party is not your agent. You irrevocably authorise us to effect such entry, and to use your name and to act on your behalf, as we believe necessary, to recover possession of the Products.

4.6 Notwithstanding clause 4.2, you may on-sell the Products, including any goods into which the Products have been incorporated, processed or comingled, in an arm's length transaction, during the ordinary course of your business and at market value to a bona fide third party that is not in any way related, or subject to similar control, to you. However, any proceeds or amount payable arising from such a sale are held by you as a fiduciary and on trust for us to the extent this does not exceed the amount you owe us for all Products and Services Delivered by us from time to time.

5. PRICE AND TAXES

5.1 Without limiting clause 3.1, unless we have agreed in writing with you a fixed price or fee (or basis for determining such) before or when we accept your order (if we do so), our list prices and fees at the time of Delivery apply and all such prices and fees chargeable by us are subject to alteration without notice prior to, or after, we accept your order (unless we state otherwise in our acceptance), including where Delivery is delayed by you

5.2 Unless otherwise specified by us, any reference to an amount payable or consideration to be provided in respect of a Delivery to be made by us or an indemnified amount required to be paid by you that is governed by or otherwise connected with these Terms is a reference to that amount or consideration excluding applicable GST.

5.3 The amount to be paid or other consideration to be provided to us for any taxable supply we make that is governed by or otherwise connected with these Terms must be increased by an amount equal to any GST that we are or will become liable to pay in respect of that supply so that we retain after payment of GST the amount which we would have been entitled to receive but for our obligations to pay GST.

5.4 If you or we are required (under or in connection with these Terms) to pay the other by way of a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that other, then the payment must be reduced by the amount of any input tax credit to which that other is entitled for that loss, cost or expense.

5.5 If a Sales Tax other than GST applies in respect of any Delivery, you are liable for it and must pay it provided that if the law requires that we pay it then the same principles as are set out in clauses 5.2 to 5.4 inclusive will apply in respect of it so that you bear the burden of it.

6. INVOICING, PAYMENT AND DEFAULT

6.1 Clause 6 does not apply to you to the extent we have extended credit to you and the terms of such credit are in writing and conflict with clause 6, in which case payment of our invoices must be made in accordance with those terms of credit, whilst they remain available to you.

6.2 Without limiting the operation of clause 3.4, we will provide a tax invoice for the relevant price and fees applicable to each Delivery prior to, at or after the time of that Delivery.

6.3 Payment of all tax invoices must be made on receipt in full (**due date**) without deduction, set-off or counterclaim. An amount outstanding will not be considered satisfied until payment is received in full. You must give us written notice within 14 days of receiving our tax invoice if you believe that the invoice is not correct. Your notice must include full details of the error(s) claimed by you. If an invoice is disputed and that dispute cannot be immediately resolved, we can withhold or defer any future Delivery (in whole or in part) pending resolution of the dispute. You must make payment of the undisputed amount due on any disputed invoice on the due date. Once the dispute is resolved, you must pay to us within three working days the resolved amount due.

6.4 If:

(a) you default in any payment due to us (including under these Terms) or we conclude that you are likely to, including where you are unable, or state that you are unable, to pay your debts as and when they fall due or where a receiver, receiver and manager, controller, trustee or other insolvency administrator is appointed, or a scheme of arrangement is proposed or approved in respect of you or a mortgagee enters into possession of any of your assets or any analogous situation occurs; or

(b) you are otherwise in breach of these Terms, the terms and conditions of any credit we extend to you (including where you exceed your credit limit with us) or any other agreement between you and us,

then you must promptly following demand by us pay to us the amount of all costs incurred by us in enforcing our rights under this agreement consequent on such default or breach and:

(c) we may, at our option:

(i) withhold or delay any further proposed deliveries (in whole or in part) or cancel or defer performance of any accepted order (in whole or in part) without prior notice to you and without prejudice to any other action or remedy which we have or might otherwise have had;

(ii) reclaim all or any Products in your possession or under the control of you or your agent and may enter premises where we believe that Products are stored or held to do so, and recover from you all costs of doing so; and/or

(iii) by notice to you, with immediate effect, terminate any and all rights (whether express or implied) that you may have, or believe that you have, to place further orders under these Terms (without limiting our discretion as to whether we accept any order placed by you); and

(d) all monies owing and outstanding by you to us on any account whatsoever become immediately due and payable (without the requirement for notice from us) and you must pay for any subsequent Deliveries on Delivery.

We will not be liable to you for any loss, harm, damage, cost or expense (including legal fees), or in the nature of special, indirect or consequential loss or damage (including consequential, special, punitive, indirect or economic loss or damage, loss of contract, loss of production or from production stoppage, or loss of profit, revenue or opportunity) you suffer or incur as a result of us exercising any of our rights under this clause.

6.5 If we believe that we have rights under clause 6.4, you must promptly respond to any enquiry from us to clarify this.

6.6 Without in any way limiting our right to require payment in full on the due date, we may charge interest on overdue accounts at the rate that is 2.0% per annum above the rate charged by the Commonwealth Bank of Australia from time to time on Corporate overdrafts. Interest will accrue daily and capitalised monthly from the due date until payment has been received by us in cleared funds. Payments by you will be applied first to interest accrued or capitalised and then to the overdue amount.

6.7 Without limiting clause 6.4, any collection charges, legal expenses (calculated on a full indemnity basis) and commissions or any other expenses incurred by us in attempting to recover from you any payment due to us (including any interest under clause 6.6) is payable by you to us on demand by us. Such amounts will incur interest at the same rate and on the same terms as are set out clause 6.6 from the date of our demand until payment has been received by us in cleared funds.

If you owe us money in connection with these Terms and we owe you any money, we may set off the amount you owe us against the amount that we owe you and pay you the resulting net amount or seek payment from you of the net amount, as appropriate.

7. OUR WARRANTIES AND LIMITATION OF OUR LIABILITY

7.1 Notwithstanding anything to the contrary in these Terms, to the extent that you acquire goods or services from us as a consumer within the meaning of the Australian Consumer Law, you may have certain rights and remedies (including consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.

7.2 Nothing in clause 7 operates to exclude, restrict or modify the application of any implied condition or warranty provision, the exercise of any right or remedy or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:

(a) contravene that statute; or

(b) cause any term of these Terms to be void,

(Non-excludable Obligation).

7.3 Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these Terms.

7.4 Except in relation to Non-excludable Obligations, our liability to you arising directly or indirectly under or in connection with these Terms or the performance or non-performance under these Terms and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:

(a) we will have no liability whatsoever to you for any loss, harm, damage, cost or expense (including legal fees), or in the nature of special, indirect or consequential loss or damage (including consequential, special, punitive, indirect or economic loss or damage, loss of contract, loss of production or from production stoppage, or loss of profit, revenue or opportunity); and

(b) the aggregate of our liability to you is otherwise limited to an amount not exceeding the consideration for the relevant Products or Services paid or payable by you in accordance with these Terms.

7.5 In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which our liability is not limited under these Terms), our liability to you for a failure to comply with any Non-excludable Obligation is limited to:

(a) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and

(b) in the case of Products, the cost of replacing the Products, supplying equivalent Products or having the Products repaired or reworked, or payment of the cost of replacing the Products, supplying equivalent Products or having the Products repaired or reworked.

7.6 You acknowledge and agree that the burden of proof in respect of alleged defects in Products or Services (or their Delivery) rests with you.

7.7 You must bear all costs of all recalls or withdrawals from sale of Products (including if comingled into or with other goods) for any reason (including if we Deliver a defective Product and/or Service). You must co-operate with us in respect of the initiation and conduct of any recall of Products with the objective being to optimise your and our reputation and goodwill whilst ensuring public health and safety is maintained at all times and all applicable laws are complied with.

7.8 You undertake to promptly inform us if you believe that any Product and/or Services is defective due to conduct for which we are responsible and in doing so must set out as much information as you have concerning the basis for your belief. You must keep the relevant Product stored separately from all others and in the state or condition in which they were Delivered to you until we (or our nominee) have an opportunity to inspect them. You must provide all assistance that we reasonably request to determine whether your belief is correct and, if we accept that we are responsible for defective Products (including Services) then you must destroy the Products or deliver them up to (or as directed by) us on our request. Clause 7.4 then applies in respect of the Products and Services.

7.9 You agree that we are not liable for any loss, defect or damage to Products and/or Services:

(a) unless you advise us of such within the time periods provided in these Terms, including in your notice full details of the Products and/or Services, the alleged defect and all documents associated with your order and Delivery;

(b) subject to clause 7.9(a), if you settle or compromise a claim by a third party concerning such without our involvement and prior written consent;

(c) subject to clause 7.9(a), whilst in transit with a third party (whether or not a common carrier) even if we arranged for that third party to transport the Products and Delivery has not occurred except to the extent you can prove that we failed to take reasonable care in packing the Products and that resulted in the loss, defect or damage;

(d) subject to clause 7.9(a), if you do not reasonably assist us with our enquiries concerning your claim.

7.10 In no circumstance will we be liable to you or any other person for any loss or damage to person or property, or for including consequential, special, punitive, indirect or economic loss or damage, loss of contract, loss of production or from production stoppage, or loss of profit, revenue or opportunity arising out of us Delivering Products and/or Services or otherwise providing or supplying or failing to provide or supply any goods or services in connection with these Terms on any account whatsoever, and whether by way of damages or indemnity or in respect of breach of contract, tort (including negligence) or defect in manufacture/processing, design or information.

8. INDEMNITY

8.1 You indemnify us and must keep us indemnified against all claims, suits, actions, demands, loss (including consequential, special, punitive, indirect or economic loss or damage, loss of contract, loss of production or from production stoppage, or loss of profit, revenue or opportunity), liability, costs, expenses (including legal expenses on a full indemnity basis), judgments and awards (**Losses**) made against us or incurred by us to the extent that the Losses are caused (directly or indirectly) by you or any of your officers, employees, agents, representatives or contractors as a result of:

(a) a breach of these Terms or your order (including where such breach arises due to our compliance with all or any of your instructions in relation to the Products and/or Services or their manner of preparation or performance, as appropriate);

(b) a failure to:

(i) ensure that any safety markings on Products are adequately displayed;

(ii) comply with any law relating to the labelling or marking of foods;

(iii) take any other reasonable precautions either to bring to the attention of any potential users of the Products any dangers associated with the Products, or to detect any matters in relation to which we may become liable, including liability under the *Competition and Consumer Act 2010*:

(c) any negligent act or omission or breach of duty;

(d) any other breach of laws, rules, standards or regulations applicable to the handling, storage, use or sale of the Products (including as incorporated into another good or service); or

(e) any claims from parties whose property has been incorporated, processed or comingled into or with the Products.

8.2 The indemnity in clause 8.1 is a continuing indemnity and is in addition to any statutory rights or remedies we may have or exercise against you.

9. PPS LAW

9.1 These Terms constitute a security agreement and you grant to us a security interest in:

- (a) all Products previously supplied by us to you (if any);
- (b) all Products that may be supplied in the future by us to you;
- (c) all goods into which the Products are incorporated, processed or comingled; and
- (d) the proceeds of sale of any of the above,

as security for payment of amounts owing by you to us for all Products and Services Delivered and all other amounts payable by you to us and your performance of your other obligations to us.

9.2 You agree:

(a) at our request, to promptly do all things (including signing all documents) and provide all assistance and information necessary to ensure that we have a perfected first ranking security interest in the collateral referred to in clause 9.1; and

(b) that we may register a financing statement or financing change statement at your cost and do anything else required to perfect our security interest in the collateral granted under these Terms.

9.3 You must not create, or permit to be created, any security interest in the collateral referred to in clause 9.1 (other than that created under these Terms).

9.4 Terms used in these Terms that are defined in the *Personal Property Securities Act 2009* (Cth) and any regulations have the same meaning.

10. GENERAL

10.1 Nothing in these Terms gives you any right, title or interest in or to any of our assets or rights other than the Products and/or Services (excluding any intellectual property rights in or relating to them and their packaging and storage, together with any associated goodwill), and then only in accordance with these Terms.

10.2 Any confidential information or intellectual property provided by us in connection with the Products and/or Services, including these Terms, remains at all times our confidential and proprietary information and may be used by you solely to complete the relevant order and for no other purpose and must otherwise be kept in strict confidence by you. Any confidential information provided must immediately be returned to us on our request (which may be made at any time).

10.3 You must ensure that you and your officers, employees, representatives, agents, contractors and advisers do not disclose any information provided by us to you unless:

- (a) the information is in the public domain (other than by reason of breach of any confidentiality obligation owed to us by anyone); or
- (b) the disclosure (including its form and context) is first approved by us in writing.

10.4 You must not without our prior express written consent:

(a) repackage Products using our intellectual property (including trade marks) or packaging;

(b) modify or in any way alter, deface or cover up all or any part of our intellectual property (including trade marks) or any part of the appearance or get-up of packaging or storage in respect of the Products; or

(c) use any other intellectual property (including trade marks) in connection with, or in association with, our intellectual property (including trade marks).

10.5 These Terms and your order and any related communications, and any dispute which arises under, out of or in connection with these Terms or your order or such communications, their negotiation or their subject matter are governed by the law of Victoria, Australia and both you and us irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Victorian courts. Both you and us must seek to resolve any differences arising under these Terms by direct negotiation for 10 days or such longer period as we agree with you before resorting to legal action.

10.6 Any personal information collected by you or us in connection with these Terms must only be used or disclosed for the purposes of ensuring performance of these Terms or your orders and any similar future agreements or arrangements. This may include disclosure within your or our organisations and to other parties involved in performing these Terms or similar future agreements or arrangements. Both we and you agree to comply with relevant privacy laws in respect of any personal information collected in connection with these Terms, any orders and any future like agreements or arrangements.

10.7 In these Terms:

(a) another grammatical form of a defined word or expression has a corresponding meaning;

(b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(d) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(a) unless otherwise agreed in writing, all references to amounts of money are references to amounts in Australian currency;

(b) unless otherwise agreed in writing, reference to weights, quantities or other measures are, unless otherwise agreed in writing, references to that weight, quantity or other measure within a variance of plus or minus 5%; and

(c) headings are inserted for ease of reference only and do not affect the interpretation of these Terms.

10.8 If part or all of any provision of these Terms or your order or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted as may be necessary to ensure it is not illegal or unenforceable. If any provision or part of it cannot be interpreted in that way, the provision or part of it will be severed from these Terms or your order and the remaining provisions continue in full force and effect.

10.9 Any notice given by us under, or failure by us to insist on strict compliance with, any agreement between you and us (including an accepted order from you) or any delay by us in exercising our rights under any such agreement is not a variation or waiver of any provision of that agreement or of any right available to us.

10.10 A rule of construction does not apply to our disadvantage because we prepared these Terms.

10.11 You may not assign or novate any or all of your rights or obligations under these Terms to a third party or purport to do so without our prior written consent (which may be given or withheld in our complete discretion).

10.12 All notices under these Terms must be in writing and delivered by you or us to the other at the address in Australia that the other specifies by notice from time to time.

10.13 Without limiting clause 1.3, any variation to, or amendment or replacement of, these Terms or any order as they apply to you must be authorised in writing by us through a duly authorised signatory on our behalf.

10.14 If you are a company or trust, we can terminate these Terms immediately by notice in writing to you if we form the view that you have undergone a change of control or other change of circumstance whereby we conclude that we would be dealing with a different party or are subject to different commercial considerations if we were to continue dealing with you. We can also terminate these Terms immediately by notice in writing to you if you sell or transfer all or a material part of your business, assets or undertaking (or agree to do so) without our prior written consent

10.15 No delay or failure to exercise any of our rights or remedies will be a waiver of any of our rights or remedies.

11. STOCK FOOD AND SECONDS

If any Product (which, for the purposes of clause 11 includes all related Services) is sold to you as stock food, seconds or any similar classification (**Stock Food**) you acknowledge that, with respect to all of the Stock Food:

(a) any additional terms and conditions that we impose (including by reference to such being set out on our website) as a condition of accepting any order for Stock Food from you (**Other Terms**) apply and the Other Terms will prevail to the extent they are not consistent with these Terms;

(b) it is not fit for human consumption and is sold by us on the express irrevocable representation and undertaking from you that all of the Stock Food will be exclusively used for the purpose of animal feed and in accordance with the Other Terms, if any;

(c) you must make yourself aware of, and comply with, all applicable laws relating to products or components of products and how they must be treated, stored and applied (including those that relate to ruminant feed bans and swill feeding); and

(d) you must not in any circumstance use or apply Stock Food for a purpose that is not expressly permitted by any applicable law concerning, or permit issued in relation to, such Stock Food or goods or products analogous to such Stock Food.

12. LIQUID BULK PRODUCTS

If any LBP (which, for the purposes of clause 12 includes all related Services) is sold to you, you acknowledge that any additional terms and conditions that we impose (including by reference to such being set out on our website) as a condition of accepting any order for such LBP from you (**Other LBP Terms**) apply and the Other LBP Terms will prevail to the extent they are not consistent with these Terms. Nothing in this clause 12 limits the operation of clause 11 so that if LBP consists of Stock Food, you must comply with both clauses 11 and 12.