

**TERMS AND CONDITIONS OF SALE
FONTERRA BRANDS (NEW ZEALAND) LIMITED**

1. DEFINITIONS

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

we, our or **us** means Fonterra Brands (New Zealand) Limited and its officers, employees, agents, contractors and advisers;

you or **your** means the purchaser or intending purchaser of the Products and/or Services 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);

Agreed Basis means:

(a) for Delivery in New Zealand, at our nominated point of collection or delivery within New Zealand, as appropriate, and assumes that:

(i) you take Delivery of the volume of Product referred to in your order;

(ii) you are liable for and responsible to 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;

(iii) 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, which must accord with Delivery documentation as set out in clause 3.3; and

(iv) 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 any such insurance; and

(b) for Delivery outside New Zealand, the Incoterms Basis applies.

associate has the same meaning as the definition of "Associated Person" in the New Zealand Securities Act 1978;

Deliver means:

(a) where the final destination of the Products is within New Zealand, to deliver Products (as evidenced by Products being available to be unloaded from transport at our intended destination where we are responsible for arranging delivery, or available for loading onto transport at our nominated despatch point where you are responsible for arranging collection, in either case as we notify you on acceptance of your relevant order);

(b) where the final destination of the Products is outside New Zealand, to deliver Products (as evidenced by the risk transfer from us to you in the Products occurring in accordance with the Incoterms Basis); or

(c) to have completed the supply or performance of Services (as reasonably determined by us),

in each case, on the Agreed Basis;

Incoterms 2000 means the international rules for the interpretation of trade terms as published by the International Chamber of Commerce, Paris, France, 2000;

Incoterms Basis means the basis for delivery in Incoterms 2000 which is specified in the export documents provided by us to you, or which is otherwise agreed between us;

Law means, other than in clauses 7 or 11, 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 in the context of the subject matter of these Terms;

PPSA means the New Zealand Personal Property Securities Act 1999;

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;

related company means a "related company" as that expression is defined in the New Zealand Companies Act 1993 (read as if the word "company" for the purposes of that definition includes any body corporate, wherever incorporated or established);

Services means any services supplied or deemed to be supplied by us incidental to the Products and/or under these Terms;

Supply, tax invoice and **taxable supply** have the same meaning as in the New Zealand Goods and Services Tax Act 1985 ("**GST Act**"), **GST** means goods and services tax chargeable under the GST Act, **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 any law applicable thereto in accordance with these Terms and includes stamp duty on these Terms or any transaction contemplated by them (but excludes any GST) and **Duty** means any tax, impost, charge or levy of an export, customs, excise, import or similar nature applicable to the exportation, importation, transportation, sale, use or ownership of any Product and/or Service performance from time to time under any law applicable thereto; and

The terms "after-acquired property", "proceeds", "purchase money security interest", "rights" and "security interest", when used in clauses 4 and 6.10, have the respective meanings given to them under, or in the context of, the PPSA.

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 which is accepted by us. They 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 and the amended Terms 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 that expressly refers to, or incorporates, these Terms (including a supply agreement or credit terms), 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 company or associate of us, either within or outside New Zealand, is involved in the sale and/or Delivery of Products to and/or the performance of Services for you, their acts are deemed to be ours, they benefit from these Terms in accordance with the Contracts (Privity) Act 1982, and we are entitled to enforce these Terms on behalf of such persons. We are not obliged to tell you about any involvement by them. We also hold these Terms on trust for our officers, employees, agents, contractors and advisers.

1.6 If we supply goods or products and/or perform services (not being Products or Services) to you or for your benefit and no written agreement or terms and conditions apply expressly to that supply or performance, then the goods or products are deemed to be Products and the services are deemed to be Services and all are bound by these Terms.

2. QUOTATIONS, DESCRIPTIONS AND PURCHASE ORDERS

2.1 No price list or quotation given by us constitutes an agreement to supply or provide (or to Deliver) the Products or Services referred to therein. We can amend or withdraw price lists or quotations at any time. All price lists and quotations are subject to these Terms. If you wish to purchase Products and/or Services referred to in a price list or quotation, you must make an order within the specific period stated in the price list or quotation. If the price list or quotation is given without specifying a period within which you are to make an order, then:

(a) in the case of a price list, the price list is automatically superseded when we send a new price list to you; and

(b) in the case of a quotation, the quotation lapses 48 hours after we send the quotation to you, without the need for us to inform you of that.

2.2 All descriptive specifications, illustrations, data, and dimensions furnished by us or otherwise contained in catalogues or other advertising material are approximate only and are intended to be merely a general description of the Products and/or Services and are not incorporated within any agreement with you under these Terms and do not form part of the description of the Products sold or Services provided under this or any other agreement with you unless otherwise agreed to in writing by us. They may represent New Zealand or Australian presentation and/or packaging, or the presentation or packaging of a third party.

2.3 We may from time to time provide advice, recommendations and statements with respect to the Products and/or Services (which may be given from a New Zealand or Australian perspective). However, we do not warrant or guarantee the accuracy or completeness of that advice, those recommendations or statements or the results obtained through the use of the Products or application of the Services. We expressly disclaim any liability for any damage to you from reliance on such advice, recommendations or statements. Such advice, recommendations and statements are relied on by you at your own risk and you should make other appropriate enquiries having regard to your circumstances.

2.4 Any sample, description or visual representation 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 in appearance or dimensions provided such are not materially adverse to you, as reasonably determined by us. They may represent New Zealand or Australian presentation and/or packaging, or the presentation or packaging of a third party.

2.5 Your orders must be in writing with a full description of your requests for the Products or Services (or both), the requested date and requested location and method of Delivery and must set out a unique order number that is acceptable to us. Where there is no nomination of a location and method of Delivery, we will advise you of the Delivery location and method (consistent with the Agreed Basis) that will apply in response to your order and that will be binding on you. Where there is no requested date or period for Delivery, then we will Deliver within three months of the date we accepted your order (exclusive of the time taken to transport to the Delivery location).

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 or, in the absence of written acceptance by us, on Delivery of the relevant Products or performance of the relevant Services. We need not accept any order. These Terms are not an express or implied offer by us to supply any good or service to you.

2.7 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 and/or impose other obligations on you as a condition of giving our consent.

2.8 We may accept your order in whole or in part and will advise where, how and when we intend that Delivery to occur (in each case having regard to any requests set out in your order) and the applicable price.

3. DELIVERY

3.1 We will make all reasonable efforts to Deliver all Products or Services to you as advised under clause 2.5 and in one load (or 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 under clause 2.5 becomes commercially impractical for us (in our reasonable opinion) then we may Deliver the Products to a commercially reasonable substitute Delivery location or using a commercially reasonable substitute method of Delivery selected by us and notified to you. In no circumstances do we Deliver on a consignment or similar basis. We will not be liable for any loss or damage (including not being liable for

consequential, special, punitive, incidental, indirect or economic loss or damage or loss of profits 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 (exclusive of the time taken to transport to the Delivery location) or such other period as we expressly agree in writing with you;

(b) part or multiple Deliveries; or

(c) a delay in Delivery, or failure to Deliver (or change in location or method of Delivery), due to circumstances beyond our control (including where you have failed to give us adequate Delivery instructions).

In the event that we are unable to Deliver Products to you due to circumstances beyond our control, we may:

(d) allocate the available Products amongst you and any of our other customers as we see fit; or

(e) cancel your order or any part thereof, even though we may have already accepted it, without resulting liability.

3.2 If you are unable to accept Delivery as, how, 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 to a third party and you will be liable for any loss incurred by us on that resale or resupply, as well as all storage, Delivery and other logistics costs and any other costs incurred by us in doing so. We may also charge you an additional business administration fee per order affected and an additional warehouse administration fee per full (or part) container load (the amount of which will be reasonably determined by us). For the avoidance of doubt, if any of the Products perish, become damaged or tainted, or are otherwise unsaleable (**Damaged**) as a direct or indirect result of you being unable to accept Delivery, you indemnify us for all costs and expenses incurred by us in connection with the Damaged Products (including arranging for transport and/or disposal). Products for the purposes of this clause 3.2 includes any of your other property which we have consolidated with, or delivered in conjunction with, the relevant Delivery at your request.

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

(a) where credit terms apply, if you do not notify us of any discrepancy within fourteen days and lodge a claim with us within 30 days:

(i) of Delivery, in the case of Delivery within New Zealand; or

(ii) of being entitled to access the Products, in the case of Delivery outside New Zealand,

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.

3.4 You must also inspect all Products Delivered and:

(a) notify us immediately upon being entitled to access the Products (whether you do inspect them or not) of any claimed defects in the Products or their packaging or storage which is, or ought reasonably

to have been, apparent on Delivery, or any other dispute in relation to the Products, and lodge a claim with us within 30 days of such notice; and

(b) notify us as soon as you become aware of any claimed defects in the Products or their packaging or storage which becomes, or ought reasonably to have become, apparent at any time after Delivery but prior to the expiry date of the Products, or any other dispute in relation to the Products, and lodge a claim with us within 30 days.

In order to make a claim pursuant to this clause, you must show that the Products have been properly stored by you at the appropriate core storage temperature and that you have not done anything that could have otherwise caused or contributed to the claimed defect.

3.5 If you do not notify us of any dispute or defect within the relevant period set out in clauses 3.3 and 3.4, as appropriate, those Products are deemed to have been Delivered by us and accepted by you in compliance with these Terms.

3.6 If we Deliver Products to you which you have not ordered, you will:

(a) hold those Products for us as bailee;

(b) store those Products appropriately and safely, and ensure those Products are kept at the appropriate core storage temperature (and, if necessary, seek instructions from us as to the appropriate storage requirements and core storage temperature for the relevant Products); and

(c) return those Products to us or otherwise dispose of or deal with those Products,

in accordance with our instructions and at our cost.

3.7 Unless otherwise directed by us in writing, any pallet, drum, container, bin or crate or other receptacle (**Receptacle**) used by us to facilitate Delivery within New Zealand 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 30 days, replaced by you. If not, you indemnify us 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 such Receptacles secure and in good condition in a manner consistent with food and health requirements relevant to the Products until the Receptacles are returned to, or collected (at your cost) by or on behalf of, us. Any Receptacle used by us to facilitate Delivery outside of New Zealand becomes your property and does not need to be returned to us.

3.8 Where the Products are to be Delivered by part or multiple shipments, any failure by us to Deliver any one or more of the shipments or any claim by you in respect of any one or more shipments will not affect our rights in respect of any Products already Delivered or that remain to be Delivered.

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, except that title to any Products referred to in clause 7.10 remains with us until such time as title in those Products has passed to us, if later.

4.3 You grant a security interest to us in each and every part of the Products as security for payment for that part and of each other part or parts of the Products and for any other amounts owing by you to us from time to time, and for the performance by you of all your other obligations to us from time to time ("**your indebtedness and obligations**"). For the purpose of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for us by virtue of section 36(1)(b)(iii) of the PPSA, you confirm and agree that you intend to and do grant us, as security for your indebtedness and obligations, a security interest in all of your present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("**excepted property**"):

(a) in or to which you have rights; and

(b) which has not been supplied by us to you,

other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by us to you.

4.4 We may allocate amounts received from you in any manner we determine, including in any manner required to preserve any purchase money security interest we have in any Products.

4.5 You must reimburse us for all costs and/or expenses incurred or payable by us in relation to registering, maintaining or releasing any financing statement in respect of any security interest under these Terms.

4.6 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.

4.7 You:

(a) agree that if, at any time, we do not have priority over all other secured parties in respect of any part of the Products, then you and we will, for the purposes of section 109(1) of the PPSA, be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section but specifically on the basis that, as between us and only to the extent of that part of the Products and the operation and application of the PPSA, section 109(1) (amended by the deletion of the words "with priority over all other secured parties") is reinstated and contracted back into; and

(b) agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms, or the security under these Terms, and waive your rights under sections 121, 125, 129, 131 and 132 of the PPSA.

4.8 At any time after a default occurs under these Terms, we may (whether or not we have exercised any other right) appoint any person to be a receiver of all or any of the Products. In addition to, and without limiting or affecting, any other powers and authorities conferred on a

receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Products.

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

(a) subject to clause 4.2, 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; and

(b) must not pledge or in any way charge or encumber the Products by way of security for the indebtedness of you or any other person, other than pursuant to clause 4.3.

You must hold any such insurance proceeds on trust for us.

4.10 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 immediately to 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, even if they are not your agent.

4.11 Clauses 4.9 and 4.10 do not apply to the extent that you incorporate Products into other goods or services that are sold or on-sell the Products in an arm's length transaction (during the ordinary course of your business) to a bona fide third party that is not in any way related to, or subject to similar control to, you and, if sold, are sold for market value. However, any proceeds from, or asset comprising an amount payable to you by, that third party in respect of that sale or on-sale are held by you as a fiduciary and on trust for us to the extent their value does not exceed the amount you owe us under these Terms.

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) or where Delivery is delayed by you. All sales and supplies are on the Agreed Basis and subject to clause 4. Unless otherwise specified, prices shown in price lists and catalogues apply to unpacked goods.

5.2 Unless otherwise specified by us or included within the Agreed Basis, any reference to an amount payable or consideration to be provided in respect of a Delivery to be made by us that is governed by or otherwise connected with these Terms is a reference to that amount or consideration excluding applicable GST, Sales Tax and Duty.

5.3 The amount to be paid or other consideration to be provided to us for any supply we make that is governed by or otherwise connected with these Terms must be increased by an amount equal to any GST, Sales Tax and Duty that we are or will become liable to pay in respect of that supply so that we retain after payment of

GST, Sales Tax and Duty the amount which we would have been entitled to receive but for our obligations to pay GST, Sales Tax and Duty.

5.4 The GST, Sales Tax and Duty will be due and payable by you on the date the payment in relation to which the GST, Sales Tax and Duty is levied is due and payable under these Terms.

6. INVOICING, PAYMENT AND DEFAULT

If we have extended credit to you, the provisions of this clause 6 will not apply to you to the extent that the terms of any such credit are in writing, explicitly specify that this clause does not apply and set out the basis for payment (in which case payment of our invoices must be made in accordance with the terms of that credit, whilst it continues to be available to you). In all other cases, this clause 6 will apply to you.

6.1 Where payment for Products is to be:

(a) by letter(s) of credit (**L/C**), you must arrange for the L/C to be issued in favour of us in a form, content and from an issuing bank that are all acceptable to us in our absolute discretion;

(b) by documentary collection, documents will be tendered against payment (**D/P**) subject to the ICC Uniform Rules for Collections which are in force from time to time; and

(c) supported by a bank guarantee or standby L/C, you must provide a first demand bank guarantee or standby L/C in a form, content and from an issuing bank that are all acceptable to us in our absolute discretion.

A deposit may also be required by us.

6.2 Unless we otherwise specify in writing, we must receive any advance payment, L/C, bank guarantee, standby L/C or deposit before we will commence processing your order. Notwithstanding the previous sentence, where we have agreed in writing that you will pay for Products based on the bill of lading date for those Products, we must receive payment within 7 days of that date. We may, without prejudice to our other rights, refuse to make Delivery of any Products unless you have duly complied with the relevant requirement.

6.3 Where we have not extended credit to you in writing, we will provide an invoice in accordance with the Agreed Basis for the relevant price and fees applicable to each Delivery.

6.4 Payment of all invoices must be made on receipt in full without deduction, set-off or counterclaim. You must give us written notice within 14 days of receiving our invoice if you believe that the invoice is not correct. Your notice must include full details of the error(s) claimed by you. If you have not given us valid notice of the error(s) within 14 days of receiving our invoice, you must treat our invoice as correct. If an invoice is disputed and that dispute cannot be immediately resolved, we can withhold or defer any future Delivery pending resolution or part-Delivery having regard to the undisputed component. 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. Time is of the essence in respect of your payment obligations to us.

6.5 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 in respect of you or any (or all) of your assets, 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 similar 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:

(c) we may, at our option:

(i) withhold the relevant Delivery together with any further proposed deliveries and/or cancel any accepted order without notice to you and without prejudice to any other action or remedy which we have or might otherwise have had;

(ii) retain any deposit you may have paid (which shall be forfeited by you) and/or draw any relevant L/C, bank guarantee or standby L/C;

(iii) reclaim the Products in your possession or under your control 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

(iv) 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; and

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

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

6.7 Without in any way limiting our other rights, we may charge interest on overdue accounts at the rate that is 2.0% per annum above the rate charged by Westpac from time to time on overdrafts of less than \$100,000.00. Interest will accrue daily and compound 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 and then to the overdue amount.

6.8 Without limiting clause 6.5(c)(iii), 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 is payable by you to us on demand by us.

6.9 If for any reason we do not obtain payment in full (whether under L/C or D/P or otherwise) you remain liable

to pay us the contract price and all related charges (including our costs of recovering any amount due).

6.10 In addition to our rights in clause 4, you hereby grant us a purchase money security interest in all Products (and any proceeds thereof) and 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. On our request, you must 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.

6.11 We may, at any time, review any grant of credit to you and suspend or cancel such credit or require you to give whatever security we consider appropriate, in our sole discretion, and we may suspend any Delivery until that security is provided.

6.12 Any shipping delays and associated costs incurred due to a delay in the payment being received by us are your responsibility.

6.13 If you owe us money for any reason and we owe you money in connection with these Terms, we may set off the amount you owe us against the amount that we owe you and pay you the resulting net amount.

7. OUR WARRANTIES AND LIMITATION OF OUR LIABILITY

7.1 Notwithstanding any provision to the contrary in these Terms, these Terms do not exclude or limit the application of any law in New Zealand or any country where such laws apply to the subject matter of these Terms with respect to any Products and/or Services where to do so would:

- (a) contravene that law; or
- (b) cause any part of clause 7 to be void.

7.2 Subject to clause 7.1, we:

- (a) make no representations or warranties concerning fitness for purpose or appropriateness for your needs of any Product or Service, and you must assure yourself of these matters having regard to your circumstances;
- (b) exclude all conditions and warranties implied into these Terms or any of your orders; and
- (c) are not and will not be liable for any claim by you under these Terms unless notice is given in writing to us within two days of Delivery of the relevant Products and/or Services, or within any other period prescribed in these Terms.

7.3 Our liability for breach of any express provision of these Terms, any negligence by us (or anyone on behalf of us) in supplying Products and/or performing Services or breach of any law that is preserved by clause 7.1 is limited, at our option, to one of the following, as specified by us:

- (a) refunding the price of the Products or Services (or offering credit where payment has not then been made); or
- (b) replacing or reworking Products or reperforming Services, or paying for someone else to do so.

Any reworking of the Products shall be effected at such place as we may specify. You shall be responsible for transporting to us any Products to be reworked or made good.

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

7.5 You must co-operate with us in relation to any recalls or withdrawals from sale of Products for any reason (including, at our cost, if we Deliver a defective Product and/or Service). You and we must co-operate in respect of the initiation and conduct of any recall with the objective being to optimise your and our reputation and goodwill whilst ensuring public health and safety is maintained at all times.

7.6 You undertake to inform us promptly if you believe that any Product 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 Products stored separately from all others and in the state or condition in which they were Delivered to you until we 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 7.3 then applies in respect of the Products.

7.7 You agree that we are not liable for any defect in or damage to Products:

- (a) if you do not advise us of such within the time periods provided in these Terms, including in your notice full details of the Products, the alleged defect or damage and all documents associated with your order and Delivery;
- (b) if you settle or compromise a claim by a third party concerning such without our involvement and prior written consent;
- (c) subject to the Agreed Basis, 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;
- (d) if you do not reasonably assist us with our enquiries concerning your claim;
- (e) if the Products have not been stored, cared for or used in a proper manner; or
- (f) which are referred to in clause 7.10.

7.8 In no circumstance will we be liable to you or any other person for any loss or damage to person or property, or for consequential, special, punitive, incidental, indirect or economic loss or damage or loss of profits or opportunity arising out of us Delivering Products and/or Services or otherwise providing or supplying 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 and regardless of whether you have advised us of the possibility of such losses or damages.

7.9 To the maximum extent permitted by law:

(a) our maximum aggregate liability for all claims howsoever arising in relation to supply of Products and/or performance of Services is limited to the price you have paid for the Products and/or Services to which the claim relates, or direct damages that you actually incur or suffer, whichever is less; and

(b) your sole remedies for any breach of these Terms or loss or damage arising from the subject matter of these Terms are expressly set out in these Terms.

7.10 If any Products Delivered under these Terms have been supplied to us by other manufacturers, you shall be entitled to such benefits as we may receive under any warranties given to us by that manufacturer to the extent that we are able to pass these on to you. Notwithstanding any other provision of these Terms, we will not otherwise have any liability to you in respect of such Products.

7.11 You agree as follows:

(a) Nothing in these Terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 ("**CGA**") except to the extent permitted by the CGA, and all provisions of these Terms shall be read as modified to the extent necessary to give effect to that intention.

(b) You shall not, in relation to the supply by you of the Products, give or make any undertaking, assertion or representation in relation to the Products without our prior approval in writing.

(c) You shall, in relation to any supply of the Products by you, contract out of the provisions of the CGA to the extent that you are entitled to do so under the CGA.

(d) If you add any labels or stickers to the Products, or otherwise modify or alter the presentation or packaging of any Products, you do so at your own risk.

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 or loss of profits or opportunity), liability, costs, expenses (including legal expenses on a full indemnity basis and any debt recovery agency fees), judgments and awards made against us or incurred by us to the extent that such is caused (directly or indirectly) by a breach of these Terms or your order, any negligent act or omission or breach of any law applicable to the handling, storage, use or sale of the Products (including as incorporated into another good or service), or any act specified in clause 7.11(d), by you or any of your officers, employees, agents or contractors.

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. NO ON-SALE OR RE-EXPORT

9.1 Unless we otherwise expressly agree in writing, you acknowledge and warrant that any Products you purchase under these Terms are purchased solely for your own use or for on-sale in the country to which those Products were originally proposed to be exported (as set

out in your order or our confirmation of such) or in which we Deliver the Products to you.

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 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 All intellectual property which is owned by, or is proprietary to, us at the date of these Terms shall remain owned exclusively by us. Any new intellectual property which is created as a result of, or in connection with, the provision of the Services, or otherwise in connection with these Terms, shall be owned by us. Nothing in these Terms confers on you any right or interest in, or licence to use, or permit to be used, any of our intellectual property.

10.4 Without limiting clause 10.3, you must not:

(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),

without our prior written consent.

10.5 You must ensure that you and your officers, employees, 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.

10.6 These Terms and your order, and any dispute which arises under, out of or in connection with these Terms or your order, their negotiation or their subject matter are governed by the law of New Zealand and you and we both irrevocably and unconditionally submit to the non-exclusive jurisdiction of the New Zealand courts. You and we must seek to resolve any differences by direct negotiation for not less than 10 days before resorting to legal action (save where immediate injunctive relief is sought by us).

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

Terms or any transaction conducted in accordance with, or pursuant to, these Terms.

10.8 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 future like agreements or arrangements. This may include disclosure within your or our organisations and to other parties involved in performing these Terms or future like agreements or arrangements. You and we 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.

10.9 In these Terms, another grammatical form of a defined word or expression has a corresponding meaning.

10.10 With respect to Products the final destination of which is in New Zealand, unless otherwise agreed in writing, all references to amounts of money are references to amounts in New Zealand currency and are payable in that currency. With respect to Products the final destination of which is outside New Zealand, all references to amounts of money are references to the currency set out in the relevant price list or quotation provided to you in respect of those Products, or as otherwise agreed between us, and are payable in that currency. If for any reason an amount is paid to us in a different currency and on conversion into New Zealand currency (and after deducting any costs or expenses incurred in accepting those funds or their conversion) we realise an amount that is less than the amount due, you must immediately pay any further amounts necessary to ensure that we receive the full amount due in New Zealand currency (including after taking account of any further conversion that is required).

10.11 Unless otherwise agreed in writing, reference to weights, quantities or other measures in relation to Product packaging are, references to that weight, quantity or other measure within a variance of plus or minus 5%.

10.12 Headings are inserted for ease of reference only and do not affect the interpretation of these Terms.

10.13 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.

10.14 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.

10.15 A rule of construction does not apply to the disadvantage of us because we prepared these Terms.

10.16 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).

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

10.18 Any variation to, or amendment or replacement of, these Terms as they apply to you must be authorised in writing by us through a duly authorised signatory on our behalf.

10.19 If you are a company or trust, we can terminate these Terms immediately by notice in writing to you, without any liability, 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 without any liability, 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.

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

10.21 A party will not be liable for any failure to perform these Terms if it is due to a cause reasonably beyond the control of that party and that party uses its reasonable endeavours to perform despite the cause.

10.22 Clerical errors or omissions, whether in compilation or otherwise in any order, quotation, acknowledgement, invoice or other such documentation, are subject to correction by us.

10.23 You acknowledge that you have received a copy of these Terms and in particular that these Terms constitute a "security agreement" for the purposes of the PPSA, and that we may register a financing statement.

11. STOCKFOOD AND SECONDS

11.1 If any Product is sold to you as stockfood, seconds or any similar classification you acknowledge that:

(a) the Products are not fit for human consumption and are sold by us on the representation from you that the Products will be exclusively used for the purpose of animal feed; and

(b) you will be liable to and indemnify us for all loss or damage (including damage to reputation) that we or any related company of Fonterra Co-operative Group Limited may suffer if you breach this clause.