

STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF COWS MILK

1. **DEFINITIONS**
 - 1.1 In these terms:
 - (a) **you** and **your** means the supplier of cows milk or services to us;
 - (b) **we**, **our** and **us** means one or more Fonterra Company(ies) that purchases the cows milk or services or any Related Company that purchases the cows milk or services from you;
 - (c) **Fonterra Company** means Fonterra Milk Australia Pty Ltd ABN 12 114 326 448; Fonterra Brands (Australia) Pty Ltd ABN 80 095 181 669; Brownes Foods Pty Ltd ABN 47 008 668 602; Murrumbidgee Dairy Product Pty Ltd ABN 87 003 114 930; or Fonterra Australia Pty Limited ABN 52 006 665;
 - (d) **Insolvency Event** means any step is taken by a mortgagee to take possession or dispose of the whole or part of your assets, operations, business or undertaking, or any step is taken to appoint a receiver, a trustee and manager (or either of them) (including a statutory manager), a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of your assets, operations or business or a similar situation occurs.
 - (e) **Related Company** means any company that, directly or indirectly, is controlled by a Fonterra Company or by another company that also controls a Fonterra Company; and
 - (f) terms defined in *A New Tax System (Goods and Services Tax) Act 1999* and *A New Tax System (Goods and Services Tax Transition) Act 1999* (Cth.) have the same meaning.
2. **TERMS APPLYING**
 - 2.1 These terms apply to all purchases of cows milk and/or services from you. They are in addition to the terms and conditions of any document or agreement (**Other Documents**) between the Fonterra company and you concerning the sale and supply of the cows milk and/or services by you to the Fonterra Company.
 - 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 or the Other Documents unless we expressly agree in writing.
3. **YOUR OBLIGATIONS**
 - 3.1 You must supply the cows milk and/or services in accordance with these terms and the Other Documents.
 - 3.2 You must hold all consents, permits and licences necessary to provide the cows milk or perform the services.
 - 3.3 Where the Other Documents 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 You must strictly comply with all obligations concerning quality of cows milk set out in these terms or the Other Documents and acknowledge that we:
 - (a) are not obliged to accept and/or pay for any cows milk that does not so comply;
 - (b) may charge you for the costs of transporting and disposing of non-compliant cows milk; and
 - (c) may terminate these terms and the Other Documents for such non-compliance (in the circumstances set out in these terms or the Other Documents).
 - 3.5 While on our sites you must at all time 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 you must deliver the cows milk to or provide the services at the address shown on the Other Documents.
 - 4.2 We may inspect, test and observe at all reasonable times the supply of the cows milk or services.
 - 4.3 We may carry out any reasonable acceptance tests of any cows milk or services or any part thereof. If any cows milk or services fail any acceptance test you will at your cost immediately remedy any problem. You will assist us with testing as requested.
5. **TITLE AND RISK**
 - 5.1 Title to any cows milk (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 to us of the cows milk in compliance with the quality and other requirements that apply to it.
6. **PRICING**
 - 6.1 The price is as determined in accordance with the Other Documents (unless otherwise specified by us in writing) and is the only amount we must pay. Unless otherwise stated in the Other Documents any price is in Australian dollars and is exclusive 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, payment by us will be subject to receipt from you of a valid Tax Invoice or an authorised issue by us of a Recipient Created Tax Invoice.
 - 6.3 We will pay for the cows milk delivered or services provided in accordance with these terms and the Other Documents.
7. **INTELLECTUAL PROPERTY AND CONFIDENTIALITY**
 - 7.1 You agree that:
 - (a) where any licence or other authorisation from any person is required to own, possess, use or resell any good or any component you will with the Price, and at no extra cost to us, procure an irrevocable and unrestricted on a non-exclusive and transferable basis for us to own, possess, use and resell the good; and
 - (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 cows milk or service will become our property.
 - 7.2 All confidential information and any intellectual property provided by us in connection with any Other Documents remains at all times our confidential and proprietary information and must be used solely to give effect to the Other Documents and for no other purpose. Any such information or property must be returned to us at any time on request by us.
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) all cows milk (and its components) will:
- (i) be fit for the expected use and purpose;
 - (ii) conforms to the specification quality and described by the Other Documents;
 - (iii) not be subject to any mortgage, charge, lien, encumbrance or retention of title;
 - (iv) be free from any defect (including any latent defect) and not contain any contaminant or hazardous substance;
- (c) our ownership, possession, use or resale of any cows milk (including as manufactured or comingled with other goods) 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 cows milk or service.
- (d) all cows milk 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 cows milk or service received from any other person to the intent 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 or remedying each defect. Without limitation to any other provisions of these terms or the Other Documents, if any defect which is a breach of a warranty results in us not receiving the expected performance or value from the cows milk then you will at your cost promptly relace the cows milk (with a full warranty) if requested by us.
9. **INDEMNITIES**
- 9.1 You will indemnify and keep indemnified us and all of our Related Companies, together with all our and their 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 or the Other Documents by you;
 - (b) any negligent or wrongful act or omission of 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 and the Other Documents; or
 - (c) any fraud, dishonesty, misrepresentation or wilful default by you or any of your employees, agents or contracts in the course of or related to the performance of, or failure to perform, any of your obligations under these terms and the Other Documents.
- We hold the rights in this clause on trust for the benefit of all other Our Indemnified Parties and may exercise them on their behalf.
10. **TERMINATION, RIGHTS AND LIABILITIES**
- 10.1 If you fail to comply with any obligation in these terms or the Other documents 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 suffer any Insolvency Event, then we may, without limitation to any other right or remedy under these terms and the Other Documents or at law:
- (a) terminate or suspend (for such period as we see fit) the operation of these terms and the Other documents or any uncompleted proportion thereof with immediate effect by notice to you;
 - (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 and the Other Documents.
- 10.2 If you suffer an Insolvency Event, we may terminate the Other Documents with immediate effect by notice to you.
- 10.3 Except to the extent required by law, neither party has any liability whatsoever (including, but without limitation, in equity contract or tort, including negligence) to the other party or any other person for any loss of profits, income or savings, or for indirect or consequential damage, loss, cost or expense suffered by that other party or any other person
11. **MISCELLANEOUS**
- 11.1 These terms and the Other Documents may only be amended in writing signed by an authorised representative of each party.
- 11.2 If any amount is payable by you to use 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 these terms and the Other Documents.
- 11.4 Nothing in these terms and the Other documents evidences any employment relationship, partnership, joint venture or agency or a relationship of trust or other fiduciary relationship.
- 11.5 Any unlawful provision in these terms or the Other Documents 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 These terms and the Other Documents constitute the entire agreement between you and us concerning their subject matter and supersede all previous agreements, arrangements or understandings between you and us concerning that subject matter.
- 11.8 A party does not waive right, power or remedy under these terms or the Other documents if it fails to exercise, or delays in the exercise of, it. Any such waiver is only binding if in writing signed by the party giving it. A single or partial exercise of a right, power or remedy under these terms or the Other Documents does not prevent another or further exercise of that or another a right, power or remedy under these terms or the Other Documents.
- 11.9 Each party must use all reasonable efforts to comply with all laws applicable to occupational health and safety as applicable to the subject matter of these terms and the Other Documents.
- 11.10 A rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of these terms and the Other documents or any part of them.
- 11.11 These terms and the Other Documents are governed by the laws in the State or Territory set out in the Other Documents and you agree to submit to the non-exclusive jurisdiction of the courts of that State or Territory. If not State or Territory is specified in the Other documents, or more than one is, the laws of Victoria will apply and the Courts of that State will have non-exclusive jurisdiction.