



## TERMS OF TRADE - SALE OF PRODUCT

### 1. DEFINITIONS: IN THESE TERMS:

**Confirmed Sales Contract** means a Sales Contract that has been accepted in writing by Synlait in accordance with clause 6;

**Customer** means the purchaser or intended purchaser of the Products (and includes any agent, contractor or representative of that purchaser). If the Customer is more than one person, the obligations upon the Customer in these Terms shall apply to all such persons jointly and severally;

**Delivery** means to deliver the Products (as evidenced by the transfer of risk in the Products from Synlait to the Customer occurring in accordance with the Incoterms Basis);

**Duty** means any tax, import, charge or levy of an export, customs, excise, import or similar nature applicable to the exportation, importation, transportation, sale, use or ownership of any Products from time to time under any applicable law;

**Incoterms 2020** means the international rules for the interpretation of trade terms as published by the International Chamber of Commerce, Paris, France, 2019;

**Incoterms Basis** means CFR (cost and freight), or such other shipping term as agreed in a Confirmed Sales Contract, as set out in Incoterms 2020;

**PPSA** means the Personal Property Securities Act 1999.

**Products** mean any products supplied to the Customer by Synlait;

**Sales Contract** means a written order for Products from the Customer that complies with Synlait's ordering procedures (as notified to the Customer from time to time);

**Sales Tax** means any tax or levy of a sales, value added or goods and services nature applicable to the sale and/or supply of any Products from time to time under any applicable law in accordance with these Terms (including for the avoidance of doubt, tax chargeable under the Goods and Services Tax Act 1985);

**Synlait** means Synlait Milk Limited, a duly incorporated company having its registered office at 1028 Heslerton Road, RD 13, Rakaia 7783, New Zealand and such other of its related companies from whom you receive Products;

**Terms** means these Terms of Trade; and

**Working Days** mean Monday to Friday, excluding public holidays in Canterbury, New Zealand.

### 2. GENERAL

2.1 All sales of Products by Synlait to the Customer shall be subject to these Terms and the Incoterms Basis. These Terms supersede and exclude all prior or subsequent discussions, representations, terms and/or conditions of trade, all written or oral agreements and any other terms and conditions which the Customer seeks to extend to the supply of Products (provided that any specific terms or conditions included in a Confirmed Sales Contract will take precedence over these Terms to the extent of any inconsistency). The Customer's placement of a Sales Contract with Synlait shall constitute its acceptance of these Terms.

2.2 Synlait reserves the right to change these Terms at any time by notice to the Customer and the amended Terms shall apply to all orders for Products placed by the Customer after receipt of such notice.

2.3 Synlait's agents and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms. Any such unauthorised representations, statements, warranties, conditions or agreements shall not bind Synlait nor shall they form a part of the agreement between Synlait and the Customer.

2.4 Nothing in these Terms obliges us to supply you with any particular quantity of Products, except as agreed in the Confirmed Sales Contract, or to continue to supply Products to you, and our arrangements with you are non-exclusive.

### 3. PRICE AND TAXES

3.1 The price for the Products and currency of payment will be agreed between Synlait and the Customer and be recorded in the Confirmed Sales

Contract and the Customer will pay for the Products in the agreed currency and at the agreed times.

3.2 If for any reason an amount is paid to Synlait in a different currency from that specified in the Confirmed Sales Contract, and on conversion into the agreed currency (after deducting any costs or expenses incurred in accepting those funds or their conversion) Synlait realises an amount that is less than the amount due, the Customer must immediately pay such further amounts as are necessary to ensure that Synlait receives the full amount due in the agreed currency (including after taking account of any further conversion that is required).

3.3 Synlait reserves the right to change its prices at any time prior to the date of the Confirmed Sales Contract. Unless otherwise specified in the Confirmed Sales Contract or included within the Incoterms Basis, the price does not include any applicable Sales Tax, Duty, other taxes, fees, freight or insurance and such amounts shall be payable in addition to the stated prices.

3.4 The amount to be paid or other consideration to be provided to Synlait for any taxable supply it makes that is governed by or otherwise connected with these Terms must be increased by an amount equal to any Sales Tax and Duty that Synlait is or will become liable to pay as a result of that supply so that Synlait retains after payment of Sales Tax and Duty the amount which it would have been entitled to receive but for its obligations to pay Sales Tax and Duty.

3.5 For the purposes of Section 11(1)(eb) of the Goods and Services Tax Act 1985, where the Customer exports the Products from New Zealand, the Customer confirms that it is not the Customer's intention to later import the Products into New Zealand for use other than in making taxable supplies or exempt supplies (as those terms are used in the Goods and Services Tax Act 1985).

### 4. PAYMENT

4.1 Unless otherwise agreed in writing by Synlait, the Customer will either pay for the Products through an initial deposit and the balance by way of irrevocable letter of credit or will prepay for the Products prior to shipment. The Customer must arrange for any letter of credit which is required to be issued in favour of Synlait not less than 12 days before the Products are loaded for shipment. Synlait will approve (in its absolute discretion) the form, content and issuing bank of the letter of credit before the Products are loaded for shipment.

4.2 The payment terms specified in any Confirmed Sales Contract shall override Synlait's standard payment terms, but only in respect of that particular Confirmed Sales Contract.

4.3 The Customer shall effect payment of all invoices in full (without deduction, set-off or counterclaim) and in cleared funds to the bank account nominated by Synlait. In the event of late payment, or if the Customer fails to post security by the required date, Synlait may impose a charge on the Customer equal to 2.5% of the amount outstanding on a compounding monthly basis, such charge being an increase in the purchase price for the relevant Products which the Customer agrees to pay by way of compensation to Synlait for its additional costs incurred. Synlait is entitled to apply any payment received towards any Products.

4.4 In the event that the Customer disputes a charge on an invoice, it shall notify Synlait within 10 Working Days of receipt of the invoice and furnish Synlait with all relevant information to enable Synlait to evaluate such claim. The Customer must pay the undisputed amount of the invoice on the due date. Once the dispute is resolved, the Customer must pay the resolved amount due within 10 Working Days. While an invoice remains disputed, Synlait is entitled to withhold or defer any future Delivery pending resolution.

4.5 If the Customer does not make payment in accordance with these Terms or any Confirmed Sales Contract by the due date, then Synlait is entitled to take any or all of the following steps (in addition to all other rights and remedies that it may have at law):

(a) cancel all Sales Contracts or Confirmed Sales Contracts and withhold all Deliveries; and/or

(b) retain any initial deposit paid by the Customer in compensation for losses and costs incurred in relation to the manufacture and allocation of Products to the Customer; and/or

(c) treat all sums owing from the Customer in relation to the supply of Products (along with any other sums that may be due to Synlait) as immediately due and payable and draw any letter of credit or enforce any other security given by the Customer; and/or

(d) institute such steps or proceedings as Synlait may deem fit for the immediate recovery of all sums due to Synlait, whether by way of negotiation, mediation, statutory demand, litigation or otherwise; and/or

(e) repossess any Products in the Customer's possession or under its control; and/or

(f) recover all of the costs incurred in effecting cancellation and/or making demand and taking action to recover monies or repossessing Products, or both.

Synlait will not be liable to the Customer for any losses the Customer incurs as a result of Synlait exercising any of its rights under this clause.

## 5. SHIPPING

5.1 Synlait's standard shipping terms are CFR (cost and freight). The shipping terms agreed in any Confirmed Sales Contract shall override Synlait's standard shipping terms, but only in respect of that particular Confirmed Sales Contract.

5.2 The rights and obligations of Synlait and the Customer in respect of CFR shipping terms (or such other agreed shipping terms recorded in a Confirmed Sales Contract) shall be as stated in Incoterms 2020.

## 6. SALES CONTRACT CONFIRMATION

6.1 Synlait will not supply Products to the Customer unless Synlait has received a Sales Contract from the Customer (which comprises an offer to purchase Products subject to these Terms) and Synlait has confirmed in writing its acceptance of such Sales Contract. No Sales Contract is binding on Synlait unless and until Synlait has accepted such Sales Contract in writing (which may be by fax or email). These Terms (or any quotations given by Synlait) are not an express or implied offer by Synlait to supply any Products to the Customer.

6.2 If Synlait confirms a Sales Contract in writing, that confirmation only represents a commitment by Synlait to supply Products pursuant to that Sales Contract. The confirmation does not impose any obligation upon Synlait to confirm any subsequent order or re-order from the Customer for the supply of Products. No on-going commitment to supply shall be implied from any confirmation of one or more orders, from any quotations given or from the previous business dealings of the parties. Synlait reserves the right to refuse to confirm any Sales Contract submitted by a Customer in Synlait's sole and absolute discretion.

6.3 Synlait may accept the Customer's Sales Contract in whole or in part and will advise where, how and when Synlait intends Delivery to occur (in each case having regard to any requests set out in the Sales Contract and consistent with the Incoterms Basis).

6.4 Once received by Synlait, the Sales Contract cannot be cancelled without Synlait's written consent (even if Synlait has not yet accepted the Sales Contract).

6.5 Synlait may cancel a Confirmed Sales Contract if the Customer:

(a) breaches any provision of these Terms, delays any delivery under a Confirmed Sales Contract which Synlait cannot reasonably accommodate (in Synlait's absolute discretion), or delays or threatens to delay any payment when due; or

(b) becomes insolvent, ceases or halts trading for any reason or, in Synlait's reasonable opinion, is unlikely to be able to pay its debts as they fall due or unlikely to be able to pay the price due under any Confirmed Sales Contract.

## 7. DELIVERY

7.1 Synlait will use its reasonable efforts to deliver the Products to the Customer as advised under clause 6.3. Dates or periods specified for Delivery are not of the essence. If Delivery as advised under clause 6.3 becomes commercially impractical for Synlait (in its reasonable opinion) then Synlait may Deliver the Products to a commercially reasonable substitute Delivery location or using a commercially reasonable substitute method of Delivery selected by Synlait and notified to the Customer. Nothing in this clause limits Synlait's ability to short-ship Product due to space limitations in containers. Synlait 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 delay in Delivery, failure to Deliver or change in location or method of Delivery or part or multiple Deliveries.

7.2 If the Customer is unable to accept Delivery as, how and where scheduled or arranged by Synlait for any reason (including where the Customer declines to accept all or any part of the Delivery or delays in doing so), Synlait may:

(a) charge the Customer any holding costs from that date until Delivery is made to the Customer. The Customer agrees to receive the Products when Delivered; and/or

(b) in its discretion, resell or resupply the Products to a third party and should there be a loss on sale, the Customer will be liable for any loss incurred by Synlait on that resale or resupply.

To avoid doubt, if any of the Products perish, become damaged or tainted, or are otherwise unsaleable (Damaged) as a direct or indirect result of the Customer being unable to accept Delivery, the Customer indemnifies Synlait for all costs and expenses incurred by Synlait in connection with the Damaged Products (including arranging for transport and/or disposal).

7.3 The Customer must inspect all Products Delivered and check all Delivery volumes and advise Synlait within 7 days of being entitled to access the Products (whether the Customer does inspect them or not) of any claimed defects or other dispute. The Customer acknowledges and agrees that the burden of proof in respect of alleged defects in Products (or their Delivery) rests with the Customer.

7.4 If the Customer does not notify Synlait of any dispute or defect within the relevant period set out in clause 7.3 the Products are deemed to have been Delivered by Synlait and accepted by the Customer in compliance with these Terms.

7.5 Where the Products are to be Delivered by part or multiple shipments, any failure by Synlait to Deliver any one or more of the shipments or any claim by the Customer in respect of any one or more shipments will not affect Synlait's rights in respect of any Products already Delivered or that remain to be Delivered.

## 8. RISK AND TITLE

8.1 Risk in all Products passes to the Customer in accordance with the requirements of the Incoterms Basis even though title may not.

8.2 Title in all Products remains with Synlait until such time as full payment is made in cleared funds for all amounts owing by the Customer to Synlait for all Products Delivered by Synlait from time to time. Synlait and the Customer's respective obligations (if any) with respect to the insurance of Products will be in accordance with the Incoterms Basis.

8.3 Without limiting clause 8.2, for the purposes of section 36(1)(b) of the PPSA, to secure all of the Customer's obligations to Synlait at any time, the Customer grants a security interest to Synlait in all of the Customer's present and after-acquired property except for those items or kind of the Customer's personal property ('excepted property') which has not been supplied by Synlait to the Customer (other than excepted property which is or comprises proceeds of any personal property supplied by Synlait).

8.4 All payments received by Synlait from the Customer will (regardless of any direction or intention expressed by the Customer in respect of such payments) be applied in such manner as Synlait considers necessary or desirable to preserve Synlait's rights as the secured party under a purchase money security interest to the maximum extent.

8.5 The Customer:

(a) agrees that nothing in sections 114(1)(a), 133, and 134 of the PPSA applies to these Terms; and

(b) waives its rights under sections 121, 125, 129 and 131 of the PPSA, and the right to receive a copy of a verification statement in respect of any security interest.

8.6 The expressions 'after-acquired property', 'financing statement', 'purchase money security interest', 'security interest' and 'verification statement' each have the meanings given to them in the PPSA.

## 9. LIABILITY

9.1 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 in any country where such laws apply to the subject matter of these Terms with respect to any Products where to do so would either contravene that law or cause any part of clause 9 to be void.

9.2 Synlait warrants that the Products conform to the specification which has been notified to you in writing or set out or referenced in the Confirmed Sales Contract for those Products at the time of shipment.

9.3 Other than the warranty in clause 9.2, Synlait makes no representations or warranties in respect of the Products, and all guarantees, conditions, warranties and terms implied by statute, common law, custom of trade or

otherwise, and whether implied into these Terms, any Confirmed Sales Contract or any other dealings between, any excluded.

9.4 The Customer assumes full responsibility for any claims relating to the Products, with the exception of any claims that the Products do not conform to the specification at the time of shipment. The Customer will carry appropriate insurance against claims for which it assumes responsibility, including product liability insurance.

9.5 Synlait will not be liable for any claim by the Customer in respect of the Products unless the claim is notified to Synlait within 30 days of Delivery. The Customer must keep the relevant Products stored separately from all others and in the state or condition in which they were Delivered to the Customer until Synlait has an opportunity to inspect them. If Synlait accepts that Synlait is responsible for defective Products, then the Customer must destroy the Products or deliver them to (or as directed by) Synlait.

9.6 Synlait's liability for breach of any express provision of these Terms or any Confirmed Sales Contract, any negligence by Synlait (or anyone on behalf of Synlait) in supplying certain Products or breach of any law that is preserved by clause 9.1 is limited, at Synlait's option, to any combination of the following selected by Synlait:

(a) refunding the price of the applicable Products (or offering credit where payment has not been made); or

(b) replacing or reworking the applicable Products or paying for someone else to do so.

The Customer's sole remedies for any breach of these Terms or any Confirmed Sales Contract, or for loss or damage arising from or relating to the supply of Products are expressly set out in these Terms.

9.7 The Customer and Synlait must cooperate in respect of the initiation and conduct of any recall of the Products with the objective being to optimise the Customer's and Synlait's reputation and goodwill whilst ensuring public health and safety is maintained. Both parties will provide all required co-operation with any regulatory authority in respect of the recall.

9.8 In no circumstances will Synlait be liable to the Customer or any other person for any loss or damage to persons or property, or for consequential, special, punitive, incidental, indirect or economic loss or damage or loss of profits or opportunity arising out of these Terms, any Confirmed Sales Contract, or Synlait Delivering Products or otherwise providing or supplying any goods in connection with these Terms or any Confirmed Sales Contract, and whether by way of damages or indemnity or in respect of breach of contract, tort (including negligence) or defect in manufacturing/processing, design or information and regardless of whether the Customer has advised Synlait of the possibility of such losses or damages.

9.9 Synlait will not be liable for any failure or delay in complying with any of its obligations to the Customer if such failure or delay results from a cause beyond Synlait's control.

9.10 The Customer undertakes to comply with all applicable laws and regulations in the countries where the Customer intends to use, sell or market the Products. The Customer warrants that any Products it purchases under these Terms are purchased for use or sale in the country to which the Products were originally proposed to be exported.

## 10. INDEMNITY

10.1 The Customer shall indemnify and hold Synlait and its officers, employees, agents, contractors and advisors ('Protected Persons') harmless against any claims, suits, actions, demands, losses, liability, costs and expenses of whatever nature incurred by the Protected Persons that arise (directly or indirectly) (including loss of reputation) in connection with a breach of these Terms by the Customer, any negligent act or omission or breach of any law applicable to the handling, storage, processing, marketing, use or sale of the Products (including as incorporated into other goods) by the Customer or any of the Customer's officers, employees, agents or contractors, or any representations made by the Customer in relation to the Products. The Customer shall further indemnify and hold the Protected Persons harmless against any claims of whatever nature that arise from Synlait's use of the Customer's brands, artwork, packaging, formulations and specifications to produce the Products.

10.2 The indemnity in clause 10.1 is a continuing indemnity and is in addition to any statutory or other rights or remedies Synlait may have or exercise against the Customer.

## 11. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

11.1 Any confidential information (including Personal Information, as defined in the Privacy Act 2020 (New Zealand)) or intellectual property provided by Synlait in connection with the Products, including these Terms and the

Confirmed Sales Contracts, remains at all times Synlait's confidential and proprietary information and must be kept in strict confidence by the Customer. This intellectual property includes the use of Synlait's name, logo, branding, imagery, marketing materials, any specifications, formulae, methods, processes, discoveries or products (including in relation to the Products themselves) developed by or for Synlait.

11.2 The Customer disclaims any interest in Synlait's intellectual property and will not challenge the validity of such intellectual property. The Customer will not take any action that may be prejudicial to Synlait's intellectual property.

11.3 Any use of Synlait's confidential information or intellectual property must be separately agreed in writing between the Customer and Synlait and will be subject to such terms of use as may be specified by Synlait from time to time.

## 12. GOVERNING LAW AND DISPUTES

12.1 New Zealand law shall govern these Terms, all Sales Contracts and all transactions between the Customer and Synlait arising out of the supply of Products by Synlait to the Customer. Synlait and the Customer irrevocably and unconditionally submit to the non-exclusive jurisdiction of the New Zealand courts.

12.2 The United Nations Convention on Contracts for the International Sale of Products does not apply to these Terms or to any transaction conducted in accordance with, or pursuant to, these Terms. For the purposes of section 5D of the Fair Trading Act 1986 ('FTA') and section 43 of the Consumer Guarantees Act 1993 ('CGA') the parties acknowledge and agree that, to the extent permitted by law:

(a) the Products are being provided and acquired in trade;

(b) to the extent that the FTA and/or the CGA applies to the sale of Products, the parties are contracting out of the CGA and sections 9, 12A and 13 of the FTA;

(c) the parties have each had an opportunity to receive advice from a lawyer prior to contracting on these Terms; and

(d) it is fair and reasonable for the parties to be bound by this clause 12.2.

12.3 Any dispute in connection with these Terms or the supply of Products to the Customer shall first be referred to a senior executive of Synlait and the Customer for resolution by negotiation for not less than 10 days before legal proceedings may be initiated.

12.4 Synlait and the Customer agree to comply with all relevant privacy laws in respect of any personal information collected in connection with these Terms and any future like agreements or arrangements. The Customer agrees that Synlait may collect, store and disclose any personal information provided to Synlait in accordance with these Terms. Please refer to Synlait's Privacy Policy for details of rights to access and to request correction of any personal information that Synlait may hold.

12.5 The Customer shall comply with the Privacy Principles contained within the Privacy Act 2020 (New Zealand) at all times regarding any personal information collected in connection with these Terms, or regarding personal information that the Customer has come into possession of during its relationship with Synlait. The Customer indemnifies Synlait against any claim(s) from an individual, individual concerned or the Privacy Commissioner, as defined in the Privacy Act 2020 (New Zealand), for breaching the Privacy Principles.

## 13. FORCE MAJEURE

13.1 Neither party will be liable to the other for any delay or failure to perform its obligations under these Terms and/or any Sales Contract where that delay or failure is caused by an event beyond the affected party's reasonable control (force majeure event). A force majeure event includes any:

(a) natural disaster, war, fire, flood, explosion, theft of material items, epidemic, pandemic, disease causing quarantine, civil commotion or emergency, armed hostilities, military mobilisation, terrorist act or imminent threat (as declared by the applicable government in the jurisdiction affected) or revolution, sabotage or military usurped power;

(b) industrial or trade dispute to the extent to which those things do not involve employees of the affected party; or

(c) any loss or disruption to infrastructure, utilities or networks.

13.2 Where any force majeure event continues for a period of 20 Working Days, then the unaffected party may terminate any Confirmed Sales Contract without liability.

13.3 Each party has a duty to mitigate the effect of a force majeure event and to use reasonable endeavours to prevent it continuing for longer than 20 Working Days.

## 14.WAIVER

No delay or failure by Synlait to exercise any of its rights or remedies will constitute a waiver or variation of any such right or remedy.

## 15.ASSIGNMENT

15.1 The Customer shall not assign or novate any or all of its rights or obligations under these Terms without Synlait's prior written consent (which may be given or withheld in Synlait's complete discretion).

15.2 Synlait shall have the right to assign or novate any or all of its rights or obligations under these Terms without the consent of the Customer.

## 16.VALIDITY

In the event that part or all of any provision of these Terms is illegal or unenforceable, such 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 and the remaining provisions will continue in full force and effect.

## 17.EXPORT CONTROL

In respect of the Products or any other items or materials supplied in relation to these Terms, the Customer agrees that they will not directly or indirectly trade with, export or tranship the Products to, transfer the benefit of, or otherwise deal with the Products in relation to any sanctioned country, specified entity, persons or organisations which are embargoed by the United Nations Security Council, The European Union and/or the United States of America. These countries include, but are not limited to: Crimea, Cuba, Iran, North Korea, Sudan and Syria. Synlait will notify the Customer of any changes from time to time. The Customer agrees to provide on request to Synlait all applicable information relating to all particular end customers, end destinations and end uses of the Products.

## 18. ANTI BRIBERY AND CORRUPTION

Each party shall:

- (a) act in accordance with all applicable laws on bribery and corruption (including the following legislation), even if it may not otherwise be subject to such legislation:
  - (i) Crimes Act 1961; and
  - (ii) Secret Commissions Act 1910;
- (b) not do or omit to do anything likely to cause the other party to be in breach of any of the laws referred to in clause 19.1(a);
- (c) not give, promise, receive or request any bribes (financial or other advantage), including but not limited to, in relation to any public official;
- (d) maintain an effective anti-bribery (including gifts and hospitality) compliance programme, designed to ensure compliance with the law referred to in clause 18.1(a) including the monitoring of compliance and detection of violations; and
- (e) reasonably assist the other party, on that party's reasonable request and expense, to comply with obligations related to bribery and corruption required by the law referred to in clause 18.1(a) above.