

TERMS OF TRADE – PURCHASE OF PRODUCTS AND SERVICES

1 DEFINITIONS

In these Terms:

Confidential Information means any information, in whatever form, about our business or the business of any of our customers that is disclosed to you or learnt by you in the course of providing the Products or performing the Services. It includes any information or data you may develop in the course of providing the Products or performing the Services (including producing the Deliverables). It does not include information which:

- (a) is in the public domain (unless that information is in the public domain because it has been disclosed without our consent);
- (b) you can prove was already known to you or was independently acquired by you (provided that the source was in possession of the information lawfully and can disclose it to you on a non-confidential basis).

Deliverables means any product, material, information or thing produced as part of the Services.

Intellectual Property includes all patents, copyright, moral rights, registered designs, registered and unregistered trademarks, trade secrets, know-how and confidential information and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, and includes all Moral Rights.

Moral Rights means any of the rights described in Article 6 of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any statute (including the Copyright Act) or any other applicable law, that exist or that may come to exist, anywhere in the world.

PPSA means the Personal Property Securities Act 1999.

Products mean the products to be provided by you to us under a Purchase Order and these Terms.

Purchase Order means a written order or written request for Products or Services from us. This could include a request by email.

Services mean the services and all Deliverables to be provided by you to us under a Purchase Order and these Terms.

Tax Invoice has the meaning given to that term in the Goods and Services Tax Act 1985.

Terms means these Terms of Trade.

we, our and us means Synlait Milk Limited, a duly incorporated company having its registered office at Rakaia, New Zealand and such other of its related companies to whom you supply Products or Services and their officers, employees, agents, contractors and advisers.

you and your means the supplier of the Products or Services (and includes any agent, contractor or representative of that supplier). If the supplier is made up of more than one person, the obligations upon the supplier in these Terms apply to all such persons jointly and severally.

2 APPLICATION OF TERMS

- 2.1 These Terms apply to all purchases by us of Products and Services from you. Your acceptance of a Purchase Order by us for any Products or Services constitutes acceptance of these Terms.
- 2.2 We reserve the right to change these Terms at any time by notice to you and the amended Terms shall apply to all orders for Products and Services placed by us after receipt of that notice.

3 SUPPLY OF PRODUCTS AND SERVICES

- 3.1 You will supply the Products or Services in accordance with the terms set out in the relevant Purchase Order and these Terms. You must receive a Purchase Order before supplying the Products or Services. If there is any inconsistency between these Terms and a Purchase Order, these Terms prevail.

- 3.2 If the Purchase Order specifies certain individuals (Nominated Personnel) to be used for the performance of the Services, you will ensure that the Nominated Personnel perform the roles described in the Purchase Order. You will not remove or replace Nominated Personnel without our consent.

- 3.3 Any forecast volumes set out in any Purchase Order for the quantity of Products we require are indicative only and are not a firm commitment by us to order this quantity of Products. Individual Purchase Orders for the Products will be issued by us as required.

- 3.4 Nothing in these Terms obliges us to issue you with any Purchase Orders or procure any particular quantity of Products or Services from you, and our arrangements with you are non-exclusive.

4 QUALITY AND ACCEPTANCE

- 4.1 The Services must:

- (a) be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons and to the best industry standards.
- (b) conform with the requirements of the Purchase Order and these Terms and with all other descriptions and specifications agreed and approved by us (if any); and
- (c) be fit for their intended purpose.

- 4.2 The Products (and any Deliverables) must:

- (a) conform with the requirements of the Purchase Order and these Terms and with all other descriptions and specifications agreed and approved by us (if any);
- (b) (unless otherwise stated in the Purchase Order) be new and unused on delivery, and where a shelf life applies, at least 75% of such life remains on delivery.
- (c) be of merchantable quality and be fit for the intended purpose (including any purpose for which Synlait Milk Limited has made known to you) and free from any fault or defect (including any latent defect) in design, materials and workmanship and not emit any contaminant or hazardous substance (unless expressly stated in the Purchase Order).

- 4.3 The receipt or signature of a delivery order by one of our officers, employees or agents is not acceptance of either the quality or quantity of any Product or Deliverable.

- 4.4 We may inspect and test at any time (whether before or after delivery) the supply of the Products or Services. However, any such inspection does not relieve you from any liability in respect of the Products or Services and in no way implies that we accept the Products or Services.

- 4.5 We may refuse to accept any Product or Service that does not conform to the requirements of the relevant Purchase Order and these Terms. If that occurs, we will notify you of the problems. You must then rectify the problems and resubmit it to us for acceptance as soon as possible. If it still fails or if you are unable or unwilling to rectify the problems, Synlait Milk Limited is entitled to:

- (a) rectify the problems using its own means and will be entitled to charge you, or set off against any amount payable to you, any such reasonable costs of doing so; and/or
- (b) terminate the purchase of the relevant Product or Service and receive a full refund from you of any charges paid to you.

5 PACKAGING AND DELIVERY

- 5.1 If the Purchase Order does not specify a particular time for delivery of the Products or performance of the Services, you must deliver them or perform them within a reasonable time. If delivery or performance

is likely to be delayed for any reason, you must follow the procedure set out in clause 8.

- 5.2 You will ensure that the Products are adequately packed for protection against damage during delivery.
- 5.3 You will supply a delivery docket in each package of Products. The delivery docket will detail the Purchase Order number and the quantity and description of the Products delivered.
- 5.4 You will show the Purchase Order number on all packages, bills of lading, invoices and in all other documents or communications concerning the Purchase Order.
- 5.5 Where applicable, the Products or Deliverables must be shipped by the route designated by Synlait Milk Limited, or otherwise agreed (if any). Any additional freight or cartage costs incurred directly or indirectly as a result of failing to observe this condition will be charged to your account.
- 5.6 If the Products are hazardous or dangerous then they must be transported by you (or your contractor) in accordance with all relevant legislation covering the handling and transportation of hazardous and dangerous goods.

6 TITLE AND RISK

- 6.1 Unless otherwise agreed or set out in a Purchase Order, risk in a Product or a Deliverable passes to us on delivery and you will ensure all Products and Deliverables until they are delivered to us.
- 6.2 Title in a Product or a Deliverable (including any parts or components) passes to us on the earlier of delivery and payment by us of any part of the price for that Product or Deliverable. You warrant that you are supplying the Products or Deliverables in the ordinary course of your business and that no other person has any encumbrance or security interest in the Products or Deliverables.
- 6.3 If a Purchase Order permits you to have a security interest in any Products or Deliverables until payment, then you agree that, notwithstanding the terms of that security interest:
 - (a) you contract out of sections 108, 109, 111(1), 112, 120(1) of the PPSA; and
 - (b) without limiting the above, you shall not have any right to enter upon our premises at any time to take possession of any Products, whether or not any Products are at 'at is defined in the PPSA). risk' (as that term

7 PRICE, INVOICING AND PAYMENT

- 7.1 Unless otherwise agreed or set out in our Purchase Order, the price stated in the Purchase Order is:
 - (a) in New Zealand currency.
 - (b) exclusive of GST, but inclusive of all other duties, taxes or charges; and
 - (c) inclusive of freight, insurance, and all costs of packaging, testing and inspection.
- 7.2 Unless the Purchase Order states that progress payments are to be made, you will invoice us on delivery of the Products and/or completion of the Services. Subject to clause 7.3 and unless otherwise agreed or set out in a Purchase Order, we will pay the price by the 30th of month following the date of a valid Tax Invoice, containing sufficient detail to enable us to establish its accuracy.
- 7.3 If we dispute any Tax Invoice (in whole or in part), we will promptly notify you, and pay the undisputed part pending the resolution of the dispute.
- 7.4 No interest will be payable to you on any amount withheld under clause 7.3 or on any other amount not paid when due.
- 7.5 Any Purchase Order given is an obligation of Synlait Milk Limited and no director or other officer of us gives any guarantee in respect of that obligation.

8 DELAY

- 8.1 As soon as you become aware that an obligation to us may not be met by the required date, you must promptly notify us and tell us:
 - (a) the cause of the delay.
 - (b) the effect of the delay.
 - (c) the steps you are taking to minimise the delay; and
 - (d) any extension of time you require to meet the affected obligations.
- 8.2 If you fail to notify us of a delay in accordance with this clause 8, you must continue to perform your obligations according to any required date, and we reserve all our rights in respect of your failure.
- 8.3 After being notified of a delay, we will discuss the impact with you. If the delay is not your fault (or the fault of your contractor), we may (but are not obliged to extend the time for meeting any affected obligation by a period we consider reasonable.
- 8.4 Where the delay is your fault (or the fault of your contractor), you must:
 - (a) commit all additional resources required to meet the required timeframe at your cost; and
 - (b) where demanded by us, compensate us for unavoidable, reasonable costs incurred due to the delay.

9 CONFIDENTIAL INFORMATION

- 9.1 You must treat all Confidential Information as strictly confidential, always keep it secure and only use it to the extent required for the proper performance of any Purchase Order and these Terms.
- 9.2 You may only disclose Confidential Information to your directors, employees, subcontractors, and consultants who need to know the information for the purposes of the provision of the Products or Services. You will remain responsible to us for any disclosed information.
- 9.3 On completion or termination of these Terms or if we ask for it earlier, you must return or destroy (at our option) our Confidential Information, and all copies of it.
- 9.4 Where any of our Confidential Information relates to any personal information about individuals, then you will ensure you comply with our privacy policies and all applicable privacy laws.
- 9.5 Without limiting this clause 9, you will not make any public statement about the subject matter of any Purchase Order or these Terms or about us without obtaining our prior written consent.

10 INTELLECTUAL PROPERTY

- 10.1 Unless otherwise agreed between us, we own all Intellectual Property that is created by you in the development of any Deliverables. We will also own the Deliverables themselves. This clause irrevocably assigns all that Intellectual Property to us at no extra cost.
- 10.2 You (or your suppliers) own all pre-existing rights in relation to existing Intellectual Property owned by you (or your suppliers) that is used in the Services, but you grant an irrevocable and unrestricted licence to use any of that Intellectual Property if it is incorporated in any Deliverables.
- 10.3 You warrant that the Services and our use of the Deliverables will not infringe the Intellectual Property rights of any other person.

11 COMPLIANCE

- 11.1 You must ensure that your employees, subcontractors, and agents comply with all our health & safety, security, operational and site procedures (including office conduct), as amended from time to time, when on our premises. We will notify you of relevant changes to our procedures and policies.
- 11.2 You must ensure that your employees, subcontractors, and agents:

- (a) advise Synlait Milk Limited of any known hazards in relation to the Products or Services prior to or at the time of delivery of the Products or Services; and
- (b) agree (where applicable due to the nature of the Products or Services provided), to submit to random drug and alcohol testing by Synlait Milk Limited from time to time, when attending Synlait Milk Limited's site.

11.3 If Synlait Milk Limited discovers an unsafe practice or a breach of clause 11.2, in addition to any other rights under these Terms, Synlait Milk Limited may immediately suspend the work associated with the unsafe practice or breach. Any such suspension will not be lifted until the work area or Product is made safe, the unsafe practice removed, or the breach rectified.

11.4 We may immediately withdraw access and terminate any Purchase Order and/or these Terms where you breach clause 11.1 or 11.2 and we regard the breach as sufficiently serious.

11.5 You must comply with all applicable laws (including laws relating to the protection of personal information and privacy) when performing the Services or providing the Products. You must ensure that the Services and Products, and our use of them, comply with all applicable laws, and do not put us in breach of any laws.

12 RECORDS AND AUDIT

12.1 You must keep records, and must ensure any subcontractors keep records, as necessary to demonstrate compliance with these Terms.

12.2 We may access your records to:

- (a) verify the accuracy of any Tax Invoice issued under these Terms; and
- (b) audit your compliance with the requirements of these Terms.

The rights under this clause continue for 12 months after the completion of a Purchase Order or the termination of these Terms.

13 INDEMNITY

13.1 You indemnify us against any loss, liability, cost, or expense (including legal costs and expenses on a full indemnity basis) suffered or incurred in connection with:

- (a) any breach of these Terms by you.
- (b) any negligent or wrongful act or omission by you during or related to the performance of, or failure to perform, any of your obligations under these Terms; or
- (c) any claim alleging that the supply of the Services or our use of the Deliverables as contemplated by these Terms, infringes the Intellectual Property rights or Moral Rights of any other person.

14 INSURANCE

14.1 Unless we agree otherwise, you must, at your cost, maintain a minimum level of public liability, professional indemnity and product liability insurance cover (as required by us) of \$2,000,000 per claim made (or such higher amount as we may reasonably require), in each case with a reputable insurer for the period you are providing the Products and Services and for at least 12 months after the completion of any Purchase Order.

14.2 If we request, you will provide us with evidence you hold the required insurances.

15 LIABILITY

15.1 Your sole remedy 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.

15.2 In no circumstances will we be liable to you 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 our purchase of the Products or Services or otherwise in connection with these Terms, and whether by way of damages or indemnity or in respect of breach

of contract, tort (including negligence) or otherwise, and regardless of whether you have advised us of the possibility of such losses or damages.

15.3 Subject to clause 15.2, our liability to you is limited in aggregate to the total value of the Products or Services giving rise to the claim or, where any claim does not relate to any particular Products or Services, our liability to you (in contract, tort or otherwise) is limited to a maximum amount of \$10,000.

15.4 We will not be liable for any failure or delay in complying with any of our obligations to you if such failure or delay results from a cause beyond our control.

16 TERMINATION

16.1 We may terminate any Purchase Order by notice to you, with or without cause, at any time.

16.2 You may terminate any Purchase Order if we fail to pay an undisputed invoice within 30 days of you notifying us that we have failed to pay any correctly rendered Tax Invoice when it was due.

16.3 On termination of any Purchase Order, you must return any of our property provided to you under such Purchase Order, and must deliver any Products or Deliverables we have paid for.

16.4 Clauses 3 to 6, and 9 to 20, survive termination of these Terms.

17 ASSIGNMENT AND NATURE OF TERMS

17.1 You must not assign your rights or obligations or subcontract any obligations under these Terms without our prior written consent (which may be given or withheld in our complete discretion).

17.2 We may assign any or all our rights or obligations under these Terms without your consent, and no change of control affecting us requires your consent.

17.3 You agree you are an independent contractor and are solely responsible for your own compliance with applicable legal requirements. Nothing in these Terms creates any employment, joint venture, partnership or agency relationship between us both.

18 NOTICES

18.1 Either you or we will give any required notice under these Terms to the other at the address or email details as last notified to the other.

18.2 Notice is effective once received and is deemed to be received if posted in New Zealand (on the fifth day), posted from overseas (seven days after posting) or emailed (when successfully received at the recipient's mail server).

19 DISPUTES

19.1 If a dispute arises under or in relation to these Terms, the affected party will promptly notify the other with the details.

19.2 Promptly after receiving notice of a dispute, both our representatives will try to resolve the dispute by good faith negotiations on a without prejudice basis.

19.3 If both our representatives have not resolved the dispute within 14 days of it being notified, either of us may pursue other forms of dispute resolution. Nothing in these Terms prevents either of us from commencing court proceedings to seek urgent interim or interlocutory relief at any time.

20 GENERAL

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

20.2 If part or all any provision of these Terms is illegal or unenforceable, that provision will be interpreted as 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.

20.3 New Zealand law governs these Terms, all Purchase Orders and all transactions between you and us arising out of the supply of Products or Services by you to us. We both submit to the non-exclusive jurisdiction of New Zealand courts.

20.4 The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or to any transaction conducted in accordance with, or pursuant to, these Terms.